

# WASHINGTON STATE GAMBLING COMMISSION

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## MINUTES COMMISSION MEETING THURSDAY, APRIL 9, 1998

**Chairman Ludwig** called the meeting to order at 1:30 p.m. at the Inn at Semiahmoo, Blaine, Washington.

**MEMBERS PRESENT:** CURTIS LUDWIG, Chairman; LIZ McLAUGHLIN, Vice Chair; EDWARD HEAVEY; and PATRICIA L. HERBOLD; and Ex Officio Members SENATOR MARGARITA PRENTICE, SENATOR RAY SCHOW, and REPRESENTATIVE RUTH FISHER. (Commissioner MARSHALL FORREST arrived near the end of the meeting for executive session)

**OTHERS PRESENT:** BEN BISHOP, Executive Director; SHERRI WINSLOW, Division Director, Field Operations; CALLY CASS-HEALY, Division Director, Licensing and Financial Investigations; CARRIE TELLEFSON, Division Director, Policy, Planning and Support; DERRY FRIES, Division Director, Special Operations; JACKI FISCHER, Program Manager, Financial Investigations Unit; JONATHAN McCOY, Assistant Attorney General; and SUSAN GREEN, Executive Assistant

**Chairman Ludwig** said there is a slight change to the agenda; the Petition for Review by Hung Le, item #10, is being moved up to item #3.

### LICENSE APPROVALS

#### NEW LICENSES, CHANGES, WITHDRAWALS AND TRIBAL CERTIFICATIONS

**Chairman Ludwig** said he sees one name that appears under two different card rooms and wondered if that meant that person was employed by both and needed a separate license for each. For example, if someone were licensed to work in Joe's Card Room, would they be able to go down the street and fill in for another one unless he got another license? **Ms. Cass-Healy** said that, technically, a transfer application would work so it was not necessarily physically two licenses, but they would have to put in a transfer application for that second place. **Chairman Ludwig** asked if they would be able to continue to work for both card room operators at the same time. **Ms. Cass-Healy** said there was no prohibition against that.

**Chairman Ludwig** asked if there were any other questions or comments by the Commission. There were none. He called for a motion.

**Commissioner Herbold** moved to approve the new licenses, changes, withdrawals and tribal certifications listed under tab #1 on page 1 through 22. **Commissioner Heavey** seconded the motion.

*Vote taken; motion carried with four aye votes.*

### REVIEW OF FRIDAY'S AGENDA

**Carrie Tellefson** said tomorrow there is a staff report from Division Director, Sherri Winslow, which is an update on the card room enhancement test program. There are two rules up for final action tomorrow relating to holding an interest in a separate business at different marketing levels. There's one rule up for discussion regarding

gambling service suppliers that's being held over so the next set of rules will catch up to it. The next set of rules regarding licensing and requirements for gambling services suppliers is up for discussion and possible filing. This is the package that Director Cass-Healy has been working on with that group for quite a few months. There is also a set of rules regarding nonprofit licensing requirements up for discussion and possible filing and some punchboard pull tab rules that contain some housekeeping changes and some substantive changes. Finally, there will be a petition by Washington Gaming Consultants regarding holding pull tab games.

**Commissioner McLaughlin** asked if it was number four or number five that was being pulled. **Ms. Tellefson** said neither one is being pulled right now. Number four, under the normal course of events, would have been up for final action this month, but they just have it under the discussion section so that it can catch up with section five.

## **PETITION FOR REVIEW**

### **HUNG LE, Seizure/Forfeiture of Assets**

**Murray Guterson**, attorney for the petitioner, appeared before the Commission to contest the portion of an order signed on January 6, 1998, that authorized seizure of a 1984 Mercedes Benz belonging to Mr. Hung Le. He gave the following background information.

**Mr. Guterson's** client, Hung Le, was arrested at the 21 Club, a card room in South King County, on June 4, 1997, for accepting bets on basketball games and he was summarily suspended from his position as a card room employee. He spent two days in jail and during that time, \$963 was found in his possession and was seized by the authorities. Mr. Le lost his attempt to recover the money in a hearing held on August 25, 1997. That same day, he was served with papers and given the right to appeal within 20 or 30 days, which he elected not to pursue. At a hearing on October 13, 1997, the judge said that the \$963 was properly forfeited. Mr. Le accepted that decision and did not appeal. He had never exercised his right to take the Fifth Amendment, he had not appealed any of the decisions, and he had freely admitted guilt all along.

**Mr. Guterson** said that on July 24, 1997, Hung Le was served with a seizure notice claiming that two old cars – a 1982 Corvette and a 1984 Mercedes Benz – were used in facilitating a gambling activity. A hearing on that matter was held on November 10, 1997, and an order was issued on January 6, 1998, requiring forfeiture of both cars. It is this decision that Mr. Guterson takes issue with and believes is unfair. He recounted the following events: on Tuesday, May 27, 1997, one week before Mr. Le's arrest on June 4, 1997, Special Agent Tina Griffin paid off a gambling debt to Mr. Hung Le in the amount of \$360 and testified on pages 28 and 29 of the transcript that Mr. Le was driving a black 1982 Corvette that he had used to transport the money that she gave him in payment of the debt. Before that, on May 13, a different agent, Raymond Wakeman, whose testimony is on page 52 of the transcript, testified he had seen Mr. Le drive the 1982 black Corvette. On the day of the arrest, there were three Gambling Commission agents: Wakeman, Griffin, and Gary Drumheller, all of whom testified that Mr. Le was driving the same '82 black Corvette. Mr. Drumheller's testimony is on page 58, Ms. Griffin's is on page 35, and Mr. Wakeman's is on page 53. One agent, James Semmens, on page 56 of the transcript, said that on one day – a different day, May 6, 1997, he observed Mr. Le drive from his home to the 21 Club. Mr. Guterson reminded the commissioners that Mr. Le was an employee, a card room dealer and what they call a starter to generate interest in a poker game and he was there in connection with legitimate, purposeful, responsible duties and all Mr. Semmens said was that he saw him drive from his home to his place of employment and on that day he was driving the 1984 Mercedes.

**Mr. Guterson** said that the judge's decision on page 11 drew a crisp distinction between the two vehicles even though she ruled against them. In paragraph 7, the judge said that the Corvette was more likely than not purchased and improved in whole or in part with gambling proceeds. In paragraph 8, she said just the contrary regarding the Mercedes. She said the record did not establish that the 1984 Mercedes was acquired in whole or in part with proceeds traceable to professional gambling activity. Mr. Guterson thinks that the only possible justification the judge might have used in making her finding and conclusion is that on this one day Mr. Le was seen driving the 1984 Mercedes and it was not one of the days that agents Griffin, Wakeman and Drumheller or even Agent Semmens said that there was any kind of illegal gambling activity whatsoever. The only reason the

judge may have ruled against them on the Mercedes is because when Drumheller was a witness, Ms. O'Neal did ask Mr. Le with respect to the Mercedes what he knew about the Mercedes. That testimony is on page 60 of the transcript. Mr. Le said his understanding of the way it had been acquired was in repayment of a loan.

**Mr. Guterson's** point was that no one even claimed that the Mercedes was mixed up in hauling a dollar or a tax token with regard to any kind of gambling activity and there was nothing about it being purchased or improved as the judge herself had found. Mr. Guterson and Mr. Hung Le take issue with the order requiring forfeiture of the 1984 Mercedes and believe it is unfair. They are asking the Commission to review their question: Where does the Mercedes come in for seizure?

**Kim O'Neal**, assistant attorney general for the Gambling Commission representing its staff, pointed out that, in the transcript they had before them, the staff had not attempted to show that the Mercedes was purchased or improved with proceeds. That was an argument they made solely as to the Corvette because that was what the evidence showed. The evidence that the staff had produced with regard to the Mercedes was that there was an ongoing bookmaking enterprise carried out by Mr. Le, which she acknowledged Mr. Guterson was correct – he did not deny that. However, he did attempt to cast some doubt on the staff's claims about how extensive that bookmaking enterprise was, but he did admit that it was over many months. It involved at least 30 bettors. She said the staff records would go quite a bit higher than that, but that it was sufficient to say that it was an extensive bookmaking operation over many months and Mr. Le did not deny that he was involved in that.

**Ms. O'Neal** said the evidence from their undercover investigation showed that Mr. Le, while he was employed at the 21 Club, on Tuesdays commonly settled up with all of his bettors and either paid them their winnings or collected from them their losses – always on Tuesdays – and he did not deny that. In fact, he admitted in the testimony that Tuesday was the day that he settled up and he also admitted that he took money with him to the 21 Club and gave it to either Tony or Joe Taton for the purpose of passing that money along to the winning bettors. There was no contest in the testimony that Tuesday was settling-up day.

**Ms. O'Neal** said that, as Mr. Guterson pointed out, Agent Semmens testified that he observed Mr. Le drive the Mercedes from his residence to the 21 Club on Tuesday, May 6, 1997. Based on that evidence, and she wanted the record to show that the burden of proof in a forfeiture case once the state has come forward with the *prima facie* case, that the burden is on the claimant. Therefore, it is Mr. Le's burden to prove to the Commission that the forfeiture of the Mercedes is not justified under the law. She said they had demonstrated under the statute that this vehicle was used to facilitate a violation of the gambling law; namely, that he drove the car to the 21 Club on settling up day. The judge found that that was sufficient to establish that it was used to facilitate carrying the information and the money to the 21 Club to carry out his bookmaking enterprise and that was the basis for her ruling that the Mercedes was properly forfeited to the Gambling Commission.

**Ms. O'Neal** urged the Commission to uphold that decision. She said there was uncontroverted evidence in the transcript to establish in accordance with RCW 9.46.231 that the vehicle was used to facilitate a violation of the gambling laws, that it is properly forfeited to the Gambling Commission. She urged them to uphold the decision of the administrative law judge.

**Mr. Guterson** said if there was one iota of testimony that on the one day that he drove, that he drove somewhere besides directly from his home to his place of responsible employment or if there was one iota of testimony that on that one day – he admitted to accepting bets for seven or eight months – but on that one day there was nothing to indicate anything erroneous about his conduct. There wasn't a Tina Griffin or a Raymond Wakeman or a James Semmens or a Gary Drumheller or anybody to say anything. The judge said that hearsay can come in – anything goes at these hearings – there was nothing to indicate that one penny passed hands on that day and as Ms. O'Neal concurred with him, the judge specifically said there was nothing to indicate that the automobile was purchased or improved with assets on gambling funds. So, there is a broad distinction between the two vehicles and they feel that this one should be returned to Mr. Le.

**Commissioner McLaughlin** said her understanding of Ms. O'Neal's testimony was that Tuesday was the regular day he settled up his bets one way or the other. She asked if Mr. Le did that at the 21 Club. **Mr. Guterson** said there was at least one time he did it – on May 27<sup>th</sup> – there's no question about it. **Commissioner McLaughlin** thought the chances were that he did it. **Mr. Guterson** said he did not deny that he could have, but pointed out

that there was no testimony that he did. He said the person who saw him drive that day did not claim that anything like that happened and Mr. Le denied doing it that day. Mr. Guterson said a lot of the records about the gambling were found at his place of residence, not at his place of employment, so it would be a far stretch to say that anything untoward happened on that particular day. If it would be a place apart from where he normally would go where he was working – he wasn't fired until a week later when he was arrested – then circumstantially there might be a point, but it was the normal place that he had been working for two years. He didn't work just on Tuesday; he worked every day.

**Commissioner McLaughlin** said what she was really trying to find out was whether he did any of this payment of his debts or collection of debts anywhere else but at the 21 Club. **Mr. Guterson** said yes, there was no question that that was not the sole place. He said Ms. Griffin testified that most of the times her monetary transactions weren't even with him; it was with a lady that was his common law wife or Morganatos was a name she mentioned – Tony and somebody else who were other human beings. **Commissioner McLaughlin** asked if that were at the 21 Club. **Mr. Guterson** said he thought it was on occasion, but not always.

**Ms. O'Neal** said that in the staff's response, there were several places in Ms. Griffin's testimony – on pages 21, 22, 24, 28, 29 and 35 – where she testified that transfers of money between her and it was often Tony Berlanges or Joe Taton rather than directly between her and Mr. Le, but Mr. Le testified and this testimony was cited in her memorandum as well at pages 92 to 94, 96 and 97, Mr. Le admitted in his testimony that he regularly gave money and information to Tony Berlanges or Joe Taton to settle up those bets and that it was regularly done at the 21 Club. It was also done a bit later in the investigation at the Panda of China, which was a card room that opened up while the investigation was ongoing. At that point, some of the activity did switch to that card room because Ms. Griffin became employed there and Mr. Le often visited there and Mr. Berlanges was also employed there. But the investigation showed that over an extended period of time during the investigation that betting activity was paid off and collected on Tuesdays at the 21 Club. She said he was not just going there as an employee; that's not the basis of staff's proof. The proof is that that was the settling up day – always on Tuesdays – that that information and money changed hands between Mr. Le and his go-between and the bettors at the 21 Club and it was not on just one occasion; it was regularly.

**Chairman Ludwig** said that there were times when it would have been appropriate for them to go into executive session and consider this, but because of today's agenda he said they would wait until the end of the agenda and notify Mr. Guterson sometime in the future.

## **GAMBLING EQUIPMENT MANUFACTURER REVIEW**

### **MUSIC VEND DISTRIBUTING COMPANY, Seattle**

**Jacki Fischer**, program manager of the Gambling Commission's Financial Investigations Unit, said this company had applied for a license to manufacture gambling equipment. They have held a class G commercial amusement game license with the Commission since 1988 and intend to perform the final assembly and servicing of the Gold Crown pull tab dispensing device. The rights to manufacture this device are held by Stuart Entertainment, a licensed manufacturer with the Commission. The company's corporate officers are Raymond Gallante, Chairman of the Board, Marvin Gallante, President, Valerie Pia, Treasurer, secretary, and Abrol Gallente, Secretary.

In late January of this year, Special Agents Elmer Holland and Gary Peterson conducted an onsite review of the company's financial records to verify ownership, corporate structure and business activity. The agents also determined that the company had sufficient capital to finance the gambling equipment manufacturing operation. Additionally, background checks were performed on all essential employees and significant shareholders of the company. Music Vend Distributing Company has 50,000 shares of voting common stock available and they have also issued 3,450 of those shares as of January 23, 1998. These shares are owned primarily by Mr. Raymond Gallente. Based on our investigation, staff recommends that Music Vend Distributing Company Incorporated be approved for licensure as a gambling equipment manufacturer.

**Chairman Ludwig** asked if Mr. Dunice, who had originally sold Music Vend Distributing to the Gallantes, was licensed by the Gambling Commission. **Ms. Fischer** said she did not think he was because that was a route-

operator-type of establishment. **Chairman Ludwig** said he asked that because he noticed Mr. Dunice has a \$1 million debt due him from Gallente and he wondered if that required that he be checked out at all as far as his background was concerned. **Ms. Fischer** said that if the purchase involved Mr. Gallente going out and financing it through Mr. Dunice, then it would, but this debt from Mr. Dunice has been outstanding for many, many years, so the answer was that they did not conduct a background investigation of him. **Chairman Ludwig** wondered when it was that Mr. Gallente made the purchase from Mr. Dunice. **Ms. Fischer** pointed out that Mr. Dunice was present if he wanted to speak with him. **Chairman Ludwig** said Mr. Gallente purchased it for \$1.5 million and he still owed the previous owner about \$1 million. **Ms. Fischer** said that was correct. **Chairman Ludwig** wondered if the staff was concerned about that. **Ms. Fischer** said they were not.

**Commissioner Heavey** asked what would happen in the event of a default on Mr. Gallente's loan. **Ms. Fischer** said in that case Mr. Dunice could come in and take whatever. **Commissioner Heavey** asked if that included the license. For example, if Mr. Gallente were to default and Mr. Dunice were to come back into possession, would that carry with it the right to operate the gambling equipment manufacturing company. **Ms. Fischer** said it would not. If Mr. Gallente defaulted, the estate of Mr. Dunice would have to come in and reapply for a license if he wanted to continue that activity.

**Chairman Ludwig** asked if there were any other questions or comments. No one had any.

**Commissioner Heavey** moved to approve Music Vend Distributing Company for licensure as a gambling equipment manufacturer in the state of Washington. **Commissioner McLaughlin** seconded the motion.

**Chairman Ludwig** asked if Mr. Gallente would like to add anything before the vote. **Ray Gallante** explained that he and Mr. Dunice had been partners for many years and he had passed away about eight or nine years ago. He is paying his estate a minimal sum over a long period of time on the balance.

**Chairman Ludwig** repeated the motion and called for a vote. *Vote taken; motion carried with four aye votes.*

## **QUALIFICATION REVIEWS**

### **SEATTLE JAYCEES, Tukwila**

**Ms. Fischer** said this organization was formed in 1931 to provide its members with leadership development opportunities through networking and community involvement. The organization has 199 active members and is governed by a board of 10 members. They have a volunteer president who oversees the organization and two employees who provide program services. The Seattle Jaycees participated in over 30 projects which benefited the local community such as The Labor of Love where the Seattle Jaycees collected enough food and money to serve over 700 hot plates of food to Seattle's homeless population. The organization also sponsored three large families during the holidays by providing food, clothing, gifts and decorations. In addition, the organization was instrumental in facilitating other local businesses to sponsor families of their own. They also hosted a Special Peoples' Cruise Program, an event in which 180 disabled young adults received an evening holiday cruise on Puget Sound.

**Ms. Fischer** said that for the fiscal year ended April 30, 1997, Seattle Jaycees met its required combined net return percentage of 12 percent for its Class "J" bingo license. By achieving a 13.2 percent net return. Seattle Jaycees did not spend more than 60 percent of the organization's gambling proceeds toward providing program services. However, the organization has been approved for an exemption from this requirement until April of 1999 while they reserve funds from improvements to their headquarters site. Once the improvements are complete, the organization anticipates it will meet this requirement. Until then, Seattle Jaycees must spend at least 25 percent of their net gambling income for program services. The organization did meet this requirement.

**Ms. Fischer** said Seattle Jaycees supporting services expenses were 48.9 percent of functional expenses, which is a violation of our WAC regulations. The main contributing factor to this violation was inaccurate allocation of expenses related to their headquarters site. As the organization restated their financial statements and allocated a greater portion of these expenses to program services which was applicable at the time, the organization would

have been in full compliance. The organization is making the necessary adjustments to their financial statement for their fiscal year ended April 30, 1998. Because the organization is willing to correct their supporting service expense allocation, staff recommends Seattle Jaycees be approved as a civic organization and authorized to conduct gambling activities in the state of Washington.

**Chairman Ludwig** called for questions or comments.

**Commissioner Herbold** asked for an example of the "inaccurate allocation" that created the problem on supporting services. **Ms. Fischer** said that organizations commonly will allocate portions of their depreciation, portions of their office supplies that relate to programs and they allocate it both to programs and supporting services. In this particular case, the organization just recorded direct expenses and although staff worked with the organization, they did not feel it was appropriate for them to handle those allocations for the organization because staff aren't there everyday and do not know how the organization runs. She said that after the organization looked at it they acknowledged they had made an error and said that they needed to correct it in their next submission.

**Chairman Ludwig** called for further questions or comments. There being none, he called for a motion.

**Commissioner Herbold** moved to approve Seattle Jaycees as a civic organization and authorized to conduct gambling activities in the state of Washington. **Commissioner McLaughlin** seconded the motion.

**Chairman Ludwig** asked if there were any representatives from Seattle Jaycees who wanted to speak before the vote be taken. The representative who was present chose not to speak and Chairman Ludwig asked for any further discussion or questions for the representative. There were none.

*Vote taken; motion carried with four aye votes.*

#### **IMPERIALS MUSIC & YOUTH ORGANIZATION, Renton**

**Ms. Fischer** said the Imperials Music and Youth Organization's mission was to instill in each person served the joy of artistic achievement, the discipline of commitment, the pleasure of participation, and provide a sense of self-esteem through music. They have been licensed since 1974, there are 4 officers and 15 active members who also serve as a board and advisory members. They conducted 8 board meetings during the last fiscal year. They provided 176 children age 21 years old and younger with programs in band, orchestra, choir and chamber music ensemble. The organization provided concerts and performances to approximately 43,000 spectators. The organization plans to acquire and build a permanent school facility in Bellevue by the year 2003. Until then, they anticipate opening an interim facility by June of this year, which will allow an expansion of their services.

**Ms. Fischer** said that for the fiscal year ended September 30, 1997, the Imperials Music & Youth Organization met its required combined net return percentage of 16 percent for a Class "M" bingo license. The organization's year-to-date net return as of December 31, 1997, is 25.3 percent and they did not have excessive reserves. The Imperials Music & Youth Organization did not spend more than 60 percent of the gambling proceeds towards providing program services. However, the organization was approved for an exemption from meeting this requirement while it reserved funds for their new permanent facility and to put funds in their program endowment fund. Their exemption is effective until September of 1998. The organization designated \$335,645 to the endowment and building fund when its fiscal year ended September 30, 1997. Supporting services expenses were 45.3 percent of functional expenses, which exceeds the 35 percent limit set forth in WAC regulations. This was due in part by the organization's reliance on volunteers for their program services. Because of the unique circumstances involving volunteer support, it is staff's recommendation that the Imperials Music & Youth Organization be approved as an educational organization and authorized to conduct gambling activities in the state of Washington.

**Chairman Ludwig** said he was curious about the change in geographical location in that they are now located in Renton but plan to build in Bellevue. **Mr. Grinnolds**, the controller of the organization, spoke on behalf of Executive Director, Greg Murray, who was ill. He said their feasibility study that was done recently indicated that

the organization would best serve the public at an intersection – Interstate 405 and 90 – which puts them in the Bellevue area. That was why they were looking in that particular geographical area. **Chairman Ludwig** said Commissioner Heavey reminded him that was Factoria, and explained also that his question was a bit facetious. He also wanted to know if they still had a drum and bugle corps. **Mr. Grinnolds** said they did not. They had found that the cost per individual was too high to warrant it, so once they get the school then they would be able to serve a lot more kids than they were able to do with drum corps activity. **Chairman Ludwig** said he was disappointed because he had enjoyed that very much.

**Senator Prentice** said Loren may be director now but when he used to direct the youngsters' activities he was pretty good at making sure the kids kept in line, literally and figuratively. She thought that the kind of question Chairman Ludwig asked about the location was one reason it's useful to be flexible. She recalled that her son had been in the group back in the '60's. She said that what had been the Seattle Buddhist scouts became the Imperials, and then the evolution of this group. They've had other locations – one in Rainier Valley -- so it is not a real stretch. She said she was surprised when they showed up in her district in Renton and the notion that they're moving where it's going to be advantageous shows that this is a group that's always been very forward-looking. She said she was sure they had researched this carefully and she was confident whatever direction they chose to go would be on target. She said the Imperials used to beat her group, the Columbians, when they used to go over for the drum corps meets and she missed them.

**Commissioner Heavey** noted that the supporting services expenses were 45.3 percent of functional expenses, which exceeded the 35 percent limit. He noted that she had said that the contributing factor to this problem related to a small number of licensees because this organization places inordinate reliance on volunteers (he disagreed with the use of the word, "inordinate", because it indicated that it is not acceptable). He asked for an explanation of how the reliance upon volunteers increases the supporting service expenses.

**Ms. Fischer** said that by using volunteers, the organization does not incur the additional program expenses for their wages. Also, by not having a building, the organization does not have the benefit of depreciation expense. If the organization had more program expenses, then the relative percentage of supporting expenses would be lower. For example, if program expenses were \$50,000 and supporting services were \$50,000, then the percentage would be 50/50. If program expenses increased to \$100,000, then the percentages would be 66/33. She referred to Attachment A at the top of the page, section II, and said the percentage she was talking about had to do with percentage of numbers under the category "functional expenses." If program services expenses are higher than the relative percentage of supporting services, expenses would naturally be lower and they would probably be in compliance. **Commissioner Heavey** said he didn't understand her answer. **Ms. Fischer** said it was an accountant's explanation and she would try to clarify. She said they were talking about the percentage of a total dollar amount. The total dollar amount that this organization spent for program services and supporting services was \$448,592. If program services were a higher percentage, supporting services would be lower. In order for the organization to have higher program services expenses and receive the benefit of that, they would need to have wages or depreciation, which this organization doesn't have the benefit of receiving.

**Commissioner Heavey** asked if she meant that if they spent less for their programs and more for employees, then they would be okay. **Ms. Fischer** said she thought so. **Commissioner Heavey** said the use of the words, "inordinate reliance on volunteers" sent the wrong message – "Don't use volunteers, pay people." He said he didn't think that was their intention. **Ms. Fischer** said she didn't think that was their point. She said they want organizations to use volunteers but they have drafted a rule proposal that will be in front of the Commission soon to address the situation where an organization doesn't pay wages for program services because they use volunteers. And an organization who doesn't have a building for programs and doesn't get the benefit of depreciation they can address those situations for those very few organizations and those rules are on the Commission agenda for tomorrow. **Commissioner Heavey** said "substantial reliance" might be a better word to use than "inordinate reliance."

**Chairman Ludwig** called for a motion.

**Commissioner Heavey** moved to approve the Imperials Music and Youth Organization as an educational organization and authorized to conduct gambling activities in the state of Washington. **Commissioner McLaughlin** seconded the motion. *Vote taken; motion carried with four aye votes.*

## **ACKNOWLEDGEMENTS**

**Chairman Ludwig** acknowledged the presence of Mr. John Daniels Jr., Chairman of the Muckleshoot Tribe. He said Chairman Daniels may have already received a letter of thanks, but he wanted to publicly thank him for his hospitality last week for hosting and providing lunch for those involved in the mediation process.

**Chairman Ludwig** also recognized Mr. Edgar Hildebrande from the British Columbia Lottery Corporation and thanked him for attending. He invited him to say a few words and Mr. Hildebrande thanked the Chairman for allowing him to attend the meeting and he said it was enlightening to see the amount of rapport the Commission has with the licensees.

## **CARD ROOM CONTRACTS UNDER APPENDIX(b) / GENERAL ENHANCEMENT PROGRAM**

### **DAVE'S PLACE PUB AND GRILL, Everett**

**Chairman Ludwig** said this one has been withdrawn. **Ms. Winslow** said they had received a call from the owners of Dave's Place Pub and Grill and they have requested to withdraw because of their own staffing issues.

## **CARD ROOM CONTRACTS UNDER APPENDIX C / HOUSE BANKED PILOT TEST**

### **ACES SPORTS BAR AND CASINO, Spokane**

**Ms. Winslow** said Aces Sports Bar Casino Limited is a commercial restaurant, lounge and card room in Spokane. They have an "E" pull tab license and a class "E" card room license. They are requesting approval to operate a total of nine tables, four of which will be house-banked blackjack with a \$25 maximum betting limit and poker will be played at the remaining tables. Agents reviewed the organization's internal controls and compared to appendices B and C and it was determined that the controls were adequate and in compliance with the appendices. On March 10, agents McFarlane and Wittmers conducted the agency's pre-operation inspection and completed the inspection checklist. During the pre-operation review, the nature, size and scope of the gaming operations and controls were compared to the information submitted by the licensee. Based on the review, it was determined that the licensee's operations are in compliance with the requirements of appendices B and C and their internal controls as they submitted. Therefore, approval to participate in the Commission's house-banking card room test as a level II, phase I operation is recommended.

**Chairman Ludwig** called for questions or comments.

**Commissioner McLaughlin** asked if that would make two mini casinos in Spokane or were there more. **Ms. Winslow** said there are presently two operating right now, so this would make three: Aces, Mars, and Silver Lanes.

**Chairman Ludwig** asked if there was a representative from the Aces Sports Bar and Casino present and there was not. He said they could have been on the agenda for Spokane but probably did not want to wait. **Ms. Winslow** said that was correct; they did not want to wait. **Chairman Ludwig** said they were asking for four house-banked tables and five on which they would take a rake, which is a player-banked game or a player-funded card game. **Ms. Winslow** said she hoped that was a misprint somewhere because five are poker tables. They should not be doing any player-funded games at this establishment. **Chairman Ludwig** said he was looking at page 1 under "scope," item #4 of the contract, where it says five will be poker tables. He said this was an area that he was always confused about because of the detail. **Ms. Winslow** said this had been a confusing area. The scope that's limited under section 4 was simply the scope of the entire program. It is not the scope of this particular agreement. That is listed under appendix A, which is the third page in that section. **Chairman**



**Ludwig** asked if the five tables taking a rake are poker tables. **Ms. Winslow** said that was correct. **Chairman Ludwig** asked where this particular licensee was located and was informed by Ms. Winslow that it was on the South Hill, and Aces was in the Valley. He asked if the Mars Hotel and Silver Lanes were in closer geographic competition than Aces.

**Rob Saucier, Mars Hotel**, answered from the audience that Mars was the only establishment in downtown Spokane. Silver Lanes was on the South Hill in a residential shopping area. Then there were two establishments that are in the Valley that are roughly a mile or two from each other, both on East Sprague, that are before the Commission today. He said Spokane was small enough that they were all in the competitive market but Aces was probably five miles from the Mars Hotel.

**Chairman Ludwig** called for any other questions or comments. There being none, he called for a motion.

**Commissioner Heavey** moved that the contract with Aces Sports Bar and Casino Limited be approved. **Commissioner McLaughlin** seconded the motion.

**Chairman Ludwig** asked how many more of the card rooms Spokane would be able to support without causing problems to one or the other. He said that might not be a fair question, but he was curious about it. **Mr. Saucier** said he thought the market had to grow. There was still a small percentage of the people in Spokane that even know that what they are doing is legal. We have people come into their establishment every day and ask how they got away with doing business and if the police knew what they were doing. He said he thought what was happening is that less than five percent of the people within Spokane County even know that this sort of activity exists outside of the tribal casinos. He said Spokane was going to be a real test because now there are going to be four establishments. He said they were aware of at least two or three more that would be coming before the Commission in the next few months and so there appears to be more in Spokane than the I-5 Corridor so they would be struggling with the good operators. He said eventually there would be some sort of market saturation, but currently only a small percentage are even participating. He said they would have to grow the market in order to be successful.

**Commissioner McLaughlin** said it would be like a grocery store, in that people shop at the one that has the most to offer them according to their tastes.

*Vote taken; motion carried with four aye votes.*

#### **TIMMENS YELLOW ROSE, La Center**

**Ms. Winslow** said the organization is a restaurant and lounge with a class "E" card room and also a pull tab license. They are requesting approval to operate a total of eight tables, four of which will have house-banked blackjack with a \$25 maximum betting limit. Poker will be played at the remaining tables. Special Agents Harris, Battaglia and Belles reviewed the internal control submission. The controls in these areas were found in comparison with appendices(b) and C and it was determined that the controls were adequate and in compliance with the appendices. Agents Belles and Battaglia conducted a pre-operation inspection on March 24<sup>th</sup> and during the pre-operation inspection the nature, size and scope of the gaming operations were compared to appendices(b) and C and to their internal control submission. Some minor internal control weaknesses were noted during the pre-operation inspections and they were all corrected as of March 30, 1998. Based on the review, staff recommend Timmens Yellow Rose Restaurant to be approved to participate in the Commission's house-banking tests as a level II, phase I operation.

**Chairman Ludwig** said Appendix A stated that there were four tables with a rake and asked if those were poker tables. **Ms. Winslow** said they were and then he asked if the other four were blackjack, which she said was also correct. **Chairman Ludwig** asked what "one additional" meant. **Mr. Winslow** said that was to advise that they are paying for an additional table at this time. They were originally signed up for seven tables. This is an additional table that they're adding to their operation. **Chairman Ludwig** said that at the last meeting when they discussed The Dragon Slayer in La Center, he couldn't remember if that were a review or a card room contract. **Ms. Winslow** said it was an initial review so it was a contract, but it was an initial review for house banking.

**Commissioner McLaughlin** asked about the name of the establishment. **Chairman Ludwig** explained that the name came as a result of the establishment across the street was named The Dragon, so the owner decided to name his establishment The Dragon Slayer. **Ms. Winslow** said this was the second establishment in the town that will have house-banked games. **Chairman Ludwig** said they would have to draw a lot of people from Vancouver because La Center is not very big. **Ms. Winslow** said it was a very small town, but they are closely located to the Vancouver area and it has quite a population for card gaming.

**Commissioner Herbold** moved to approve the contract that allows Timmen's Yellow Rose Card Room participate in the house-banked pilot program. **Commissioner Heavey** seconded the motion.

**Chairman Ludwig** asked if there was further discussion and if a representative from Timmen's Yellow Rose was present, but there was not.

*Vote taken; motion carried with four aye votes.*

### **EAST BOWL LTD, d/b/a PLAYERS AND SPECTATORS, Spokane**

**Ms. Winslow** said they are an entertainment center with a restaurant, lounge and card room. They have held a "K" pull tab license and a "E" card room license. They're requesting approval to operate a total of 15 tables, which will include progressive blackjack, Caribbean Stud, and Let It Ride. In addition, they will be including five poker tables. Special agents reviewed the Players and Spectators internal control submission. The controls in the areas were compared to appendices(b) and C and it was determined that controls were adequate and in compliance with the appendices. Special Agent Wittmers completed a pre-operation inspection and during the inspection the nature, size and scope of the gaming operation and controls were compared to the appendices and to the internal controls submitted by the licensee. All areas of the operation were reviewed and met the requirements of the Commission. Based upon the review, the staff recommends Players and Spectators be approved to participate in the Commission's house banking test as a level II, phase I operation.

**Chairman Ludwig** asked if there were any representatives of the organization present. There were none. He asked if this facility would be relatively close to Silver Lanes. **Mr. Saucier**, from the audience, said that their closest competitor would be Aces because they were further out in the Valley. **Chairman Ludwig** asked if the statement "alternate collection of fees not applicable" meant that there were going to be no tables with a rake. He also asked how many of the 15 were poker tables. **Ms. Winslow** said she assumed that that meant they were collecting by time at their poker tables, and there were 5 poker tables.

**Chairman Ludwig** called for questions and comments.

**Commissioner Herbold** pointed out to Ms. Winslow that each of the establishments that they were looking at today showed an amount due under the "Costs of Participation" and wondered if that was because they pay in installments or because they wait until the Commission gives approval today before they pay the final installment. **Ms. Winslow** said that what happens is that staff ask for payment prior to their being forwarded to the Commission for approval and when staff put amount due it's to distinguish between what was previously paid on the existing contract and the additional amount based on their going into the house banking program and has already been paid.

**Commissioner Herbold** moved to approve the contract for Players and Spectators to participate in the house banked pilot program. **Commissioner McLaughlin** seconded the motion

*Vote taken; motion carried with four aye votes.*

### **HOUSE BANKED PILOT TEST – PHASE II REVIEW**

## **FREDDIE'S CLUB, Renton**

**Ms. Winslow** said a copy of the review report was just handed out and should go inside the handout packet #2 under tab 16. She said GSG Corporation currently owns Freddie's Club. On August 18<sup>th</sup> GSG Corporation requested approval to bring Freddie's Club into the house banked pilot study as a level II, phase I participant. Freddie's Club received approval to begin operations on November 10, 1997. They have 15 tables in operation and are open between 2 and 10 a.m. daily. Of the 15 tables, 13 will offer house-banked games. The other 2 tables will be poker tables utilizing a rake and offering a PSJ. The current wagering limits have been set at a maximum of \$25.

**Ms. Winslow** said that Freddie's Club's six-month anniversary date is May 10, 1998. This is the earliest point at which Freddie's Club could proceed to a level II, phase II, which allows up to a \$100 wager. The phase II review for Freddie's Club has been completed. The review procedures included, but were not limited to, comparison of the actual operating procedures to the licensee's submitted internal controls, security surveillance procedure reviews, accounting department procedures and records review, accountability testing for the gaming equipment and supplies, credit extension testing, undercover surveillance of gaming, and local law enforcement impact reviews.

**Ms. Winslow** said that a summary of the noncompliance issues includes failure to license key personnel, incompatible functions, inadequate staffing for certain procedures, failure to perform internal audit functions, not having a separate PSJ account, failure to properly disclose PSJ's, sensitive documents not being controlled, incomplete records, and then noncompliance with Title 31 Bank Secrecy Act. As a result of the discrepancies noted in staff's review, the staff recommends that the decision to approve implementation to phase II status for Freddie's Club be delegated to the director for approval upon correction of the noncompliance issues. The time period leading up to May 10<sup>th</sup> should provide the licensee with sufficient time to make the changes detailed above and for the agency staff to monitor those changes. The licensee has already begun implementing changes to correct a number of these discrepancies. The licensee does have representation here who would be available for questions or comments.

**Bob Tull**, attorney for Freddie's, reiterated what Ms. Winslow said about measures already having been taken to make sure the compliance issues were dealt with and it was Mr. Steiner's belief that he could now demonstrate that these have been achieved. He said they understood that staff would need to come back in and to check to make sure appropriate measures had been taken. In the normal course of events, this would simply have been held up until the May Commission meeting, but since there is no May meeting, he said they support the staff's suggestion that Mr. Bishop be allowed to sign the approval for the wagering limit change at such time as he is satisfied, based on his staff's review, that any of these compliance issues have been fully remedied.

**Mr. Tull** said that the original precedent for phase II review system was in the tribal compact arena. In that situation, this agency has a co-regulatory role. In the house banking card room situation, the agency has an absolute regulatory role. It doesn't share that; it doesn't delegate it and, therefore, the agency's ability to check for compliance, if necessary on a daily basis, is in no way restricted. So there is no danger, in his view, in this type of situation during the test period the director can effectuate, if necessary, any number of emergency changes. In this particular situation involving Freddie's Club, they believe these measures with regard to compliance issues are being dealt with. Mr. Steiner and his crew understand the importance of these matters. Mr. Tull said he was able to participate in one meeting last week and was impressed with the patience of the staff and their serious, explicit, but also constructive approach. He believes Ms. Winslow's recommendations were appropriate. He said that although he had been asked to speak on behalf of the organization, Mr. Steiner would be happy to respond to questions as well.

**Chairman Ludwig** recalled that it was at the September or October meeting that the Commission delegated to the director or approved the contract subject to the director's satisfaction prior to the next meeting because he wanted to open as soon as the rules became effective.

**Mr. Tull** said he recalled that the result of the Commission's considered decision allowed Mr. Steiner to open a few days early which allowed him to do a demonstration for the Commission and other folks a day or two before

the Commission's November meeting. The rule had become effective, but the contract approval was handled in a similar basis. He thought this was a much more evolved status in terms of the regulatory scrutiny.

**Chairman Ludwig** said that what they were asking now was not much different from what the Commission did last fall in approving the opening on the original contract.

**Mr. Tull** thought it was similar in that it placed reliance, which he thought was not unusual for the Commission and the director, to maintain the ongoing types of control that this test envisioned to make sure the Commission is aware of what's going on. He said his earlier comments about the comparison between this and the tribal arena was that unlike that the Commission had total control under the test program. He said it was similar and appropriate and they appreciated the staff's recommendations as well as the Commission's prior consideration.

**Chairman Ludwig** said from that original meeting where the approval was authorized, he recalled Mr. Tull's comments because that was the first one that they could use Freddie's Card Room as kind of a laboratory test. Considering the discrepancies noted, he wondered if that test worked out pretty successfully.

**Mr. Tull** said his initial response would be that the operation as far as he could evaluate had been successful on both the business level and on the basis of it being a highly regulated activity. The detailed review just completed by staff was a very purposeful part of this test situation and it was crucial that it be a fine-toothed comb review. He said it was intended to be a really strong signal to the licensee community that these controls matter day in and day out and that this agency was going to review compliance from time to time in view of the very fine-toothed comb. He felt that program is thus far working. He said he was not aware of expression of concerns that public interests have been endangered. He said he knew it was a stated goal of management of the staff at the Gambling Commission to make sure licensees throughout their organizations understand that these rules are of utmost importance, that it is a different environment than the old card room environment, and that it takes a high level of daily commitment to make sure that things are safe. The amounts of money that are now involved require constant vigilance. This test program is establishing that, he said, both within and without the licensing community.

**Commissioner Herbold** said she had not had a chance to review the material in depth yet, but of the 16 non-compliance items, some of them appeared to be of fairly significant non compliance. Failure to monitor the security cage, failure to monitor who's entering the security or surveillance area – things like that – seemed significant to her and what they are being asked to do is to delegate authority for this change to a phase II operation which takes a wagering limit from \$25 to \$100. She said she was not real comfortable with that because this was a test program and because she thought these were fairly significant non compliance issues. She said she would be more comfortable waiting until the June meeting and seeing if all of these things had been taken care of to the Commission's satisfaction, to the staff's satisfaction.

**Mr. Tull** said the purpose of the recommendation was to put the Commission in functionally that situation. There would not be a change in the limits unless and until the staff had reached the point of being firmly and fully convinced that all compliance issues had been resolved. In this instance, the change could not take place prior to May 10<sup>th</sup> because that's the anniversary date that's being used as a benchmark. If the Commission were having a May meeting, they would be there to demonstrate it. They intend to submit a written compliance response in the coming week or so which they hoped would facilitate their review. He said that would be provided to the Commission and his notion was that the Commission's approval would be conditional on timely finding by the director. He said it was not so much a delegation; he is the Commission's gatekeeper for this particular type of decision. He said that was consistent with the overall test program.

**Commissioner Herbold** said this is a test program, and she felt that it was appropriate that the public see that the Commission had publicly made sure that everything had been complied with before approval because it sends a message to the others who are in or want to be in the test program that the Commission really is watching this carefully.

**Mr. Tull** said there was no dispute with the importance or appropriateness of that, but it was simply a timing problem that they cannot affect except by asking for this type of conditional approval. He said it was not conditional on what Freddie's does, but it was condition

++al on the director determining that the Commission standards had been met.

**Commissioner McLaughlin** said that most of these items are in Mr. Steiner's best interest to take care of. It is where he could be cheated. All except one which bothered her because he had been in this business a long, long, long time and that was number one, that there was a failure to license some of the people working in his club. **Mr. Tull** said he did not have the document the Commission had. They had an informal list.

**Fred Steiner**, owner of Freddie's Club, said the Commission had initially waived the 20-day wait for the licensee because they have so many – like a 150 applications all at one time. Actually, some of those licensees that want a license were licensees that applied for licenses and never received them in about a four-month period; in fact, the checks had cleared the Gambling Commission and there was a couple that expired that he didn't catch. They now have that all on the computer and know when each person's license expires. He said there was a learning curve for him, too. They went from an operation of 40 employees to one of 175 employees. It took him awhile to get things right, but all of these deficiencies that were noted have all been fixed. He said the people who were in the surveillance room were there because he had part of the casino manager's office in there. To change that they had to do some remodeling to get it done. The jackpot account that wasn't right was because they put the money they received from the progressive blackjack – the money they set aside waiting for a winner in with that money considering it was kind of like in their mind like a jackpot-type money. Those two monies were moved together and so it was just a bookkeeping mistake on their part and it has been changed. He said the signage did not explain exactly how the jackpot worked, just an oversight.

**Commissioner McLaughlin** asked how they were going to get all of the people licensed by May 10. **Mr. Steiner** said they are all licensed now. The ones who couldn't be licensed no longer work there. **Commissioner McLaughlin** said the report says that as of April 8, it says there are nine people who had not gained a valid license. Five had licenses that are expired. **Mr. Steiner** said that was right, but it had all been redone. Anybody who didn't have a license or whose license was not renewed does not work there.

**Ms. Winslow** clarified that there was a timing issue and this review was completed just prior to the meeting, so there has not been enough time to go out and verify his statement. She said she did not want to dispute Mr. Steiner's statement because she simply did not know. She has been informed by her staff that they had made significant efforts to correct the deficiencies that had been noted. Whether that was one of the deficiencies that has been corrected or not she did not know.

**Chairman Ludwig**, referring to the 20-day waiting period that he had discussed with her recently, asked if that had been in effect since last November. **Ms. Cass-Healy** said the 20-day waiting period just became effective. They just wrote it into the contract about two months ago and it was in conjunction with some of the employee concerns that were just recently coming up, so it was fairly new.

**Chairman Ludwig** said he recalled that last year when Mr. Steiner wanted to start the program, he got approval to open up even before the effective date of the rule – at least conditional approval subject to Mr. Bishop's final approval – and now he's saying the reason they had some unlicensed key employees is because he didn't have enough time. He reminded him that he had all of these employees that applied and were ready to go to work. **Mr. Steiner** said no, there was time and they had mailed in all the applications and they could go to work – at that time they could go to work right after they mailed it in. **Chairman Ludwig** said he was the one who got the benefit of getting started and getting into business and he understands that it's a very nice establishment that seems pretty successful, so it has been to his advantage. But he shares Commissioner McLaughlin's concern about having unlicensed employees. Did you make any inquiry of the licensing division about going ahead and having these people work?

**Mr. Steiner** said there were no unlicensed employees in their establishment. **Chairman Ludwig** agreed that now there weren't but there were when the staff did this phase II review. The date the review was done is not on this report that he could see. **Mr. Steiner** said everyone applied for the license. He said no one was working who didn't send in the application and their check for the license.

**Director Bishop** said there was a procedure whereby to implement this, they would grant waivers for the 20 days for the startup. **Ms. Cass-Healy** said there is a procedure, but she just recently received some from Freddie's

and that could be what Mr. Steiner is referring to, but she was not aware of the specifics of this particular case at this time.

**Mr. Bishop** said that if that were the case, the employees could not go to work immediately upon submitting an application.

**Commissioner McLaughlin** said the reason she's really concerned about this is because it said to their constituents – the citizens of the state – is that everyone that works in all of our licensed places and this includes their casinos also are licensed. They go through background checks and then to see something like this for somebody like Mr. Steiner who's been in the business for a lot of years, it really bothered her. **Mr. Steiner** said all of the people applied for licenses. He said at that time they didn't have to wait for 20 days; at first they said we did and then they said okay go ahead you don't have to wait when they first opened. **Ms. Winslow** said when they first started the program, they had not defined "key employee". That happened as the program went along. Mr. Steiner's operation started before the key employees – or at least he had begun some of his activities before that timeframe, so there might be some timing overlap where he did have employees in place, but then they got into the key employee situation and he actually did have people in place that weren't licensed at the point of the review. It might be a timing issue, but she didn't have the file information with her today to properly answer the question.

**Chairman Ludwig** said he could appreciate that but he was going on the report that says "An exit conference was held on March 30, 1998" – about 10 or 11 days ago – "and the following violations were noted and the deferral to the director for approval upon correction of the violation is recommended." He said the report did not say whether those violations existed on March 30<sup>th</sup> or previously, but number one, nine employees had not obtained a valid license. He wondered if that were as of March 30. **Ms. Winslow** said that was correct.

**Chairman Ludwig** pointed out to Mr. Steiner that as of 10 days ago, they had been open for four months and they still had unlicensed employees. **Mr. Steiner** said that because of a 20-day waiting period and the fact that he didn't follow up when they didn't show up and they didn't get denials on them, it was an oversight that he didn't follow up on them.

**Commissioner McLaughlin** said she understood the part about letting them go to work at the beginning without the license to start, but after four months into the game, that 20 days should have been back in place and they're not supposed to go to work until they have their license. **Mr. Steiner** said that when they didn't hear from the licensing section one way or another, they didn't follow up and they were overwhelmed with business in the first and it was overlooked. **Chairman Ludwig** asked if those nine employees now had their licenses – in other words, did they get them in the last days? **Mr. Steiner** said yes. **Chairman Ludwig** asked what prompted them being obtained in the last 10 days. **Mr. Steiner** said the review prompted them to look into it when they realized they did not have them. He said they all had applied, but had not received them, but then all but one got them within the last 10 days. The one who did not receive a license was let go.

**Senator Schow** said Mr. Steiner's employees applied for their license, but the checks weren't made and they weren't sent their license and Mr. Steiner did not realize that they had not received their license and so they continued working until this review when he found out and between Mr. Steiner and the Commission, the rest were taken care of.

**Mr. Steiner** said one of the mistakes they made was they grouped a lot of the applications and they wrote one check from the corporation. Some of the employees didn't have the money and the corporation advanced the money and then later took it out of their paychecks. There was some difficulty in tracing the money. It is straightened out now and they have a system which will prevent that from happening in the future.

**Ms. Cass-Healy** said there is nothing preventing an employee from working after the 20-day waiting period is up, and she wasn't sure where that idea came into the conversation. She said she knew she got several requests from Freddie's Club to allow dealers to work over the last several days, but they did not have the applications on file for those at the time they received the request. They were mostly dealers so she guessed that most of them were okay at this point.

**Commissioner McLaughlin** asked if they got their licenses. **Ms. Cass-Healy** said it takes awhile to get the license out, but they're still eligible to work after the 20-day period after they do the initial check. **Senator Schow** asked how long it usually took once they received an application to process it. **Ms. Cass-Healy** said it could take up to 90 days, depending upon when they get the fingerprints back, how long the check takes, if there are problems, if they have to do follow-up. But again, it doesn't prevent them from working unless something comes back on the initial check that's a problem. **Senator Schow** said that otherwise they could be waiting up to as much as 90 days before they could go to work after they made their application. **Ms. Cass-Healy** said that was correct.

**Director Bishop** said he wanted to clarify that traditionally, a licensed employee has been able to go to work -- by rule -- ever since he had been with the Commission as soon as they had a valid application on file, as long as there was no criminal history, which was the exception to the rule. He said that when they went into this program, they decided that it was important enough that they change this long-standing exception. The tribes have always had to do that. In fact, the staff negotiated down that we wanted licenses to be issued. They negotiated back that we had to be reasonable about this because at some point in time -- and we said about 20 days -- and that was the reason that they actually put 20 days in this because the card room employee takes on a different role. It's an active and an important part of the internal control system in the casino or house games whereas before, they were important in one respect, but they did not actually become a part of the system. What he was getting at was that part of this probably could be attributable to procedures and change in the two. He said he knew that they implemented the 20 days after they started the test program -- at what point he didn't know. He said it was his opinion it was very serious to have unlicensed employees in an activity.

**Chairman Ludwig** said he was inclined to assume that those nine employees who didn't have a license on March 30 had waited out the 20 days or maybe they were working before the 20-day waiting period was enacted. **Director Bishop** said they may not have been aware of it. He said it was his opinion that it was Mr. Steiner's responsibility to know if someone is licensed and when they can go to work. **Ms. Winslow** said she was also advised that they did not have applications on file for those individuals. **Chairman Ludwig** said that clarifies the issue. There were nine people there without licenses who hadn't even applied for a license.

**Mr. Tull** said one of the problems they had up until today, all they had received other than the exit conference discussion which he didn't attend, was a simple list. He said that the manner and the timing at this presentation made it very difficult for them to give the Commission the full context. Some of these items were important and dealt with; others are extremely important and they would want to know what happened, how it happened, and so forth. He said that now they have a full explanation they can make a full response and show how compliance has been achieved. He said it was important to recognize that those who have done the evaluation have laid out in detail what their issues were, but they had not expressed to the Commission the kind of alarm that would attach if these were seen as intentional violations or things that weren't correctable as being handled by an operator who isn't going to take care of it.

**Mr. Tull** said that if they weren't under the time pressure they would have come before the Commission with a completely handled set of responses. He said they had not seen this so it was hard for them to give the Commission the full response and they apologize for that circumstance which they feel was somewhat beyond their control. They thought, based on the conversations that had been held with staff, that the nature and scope of these types of issues, the measures that were already underway to correct them -- were such that they could be followed up in the manner that the recommendation you received today provides for. He said they appreciate the manner and the scope of the Commissioners' concerns. He said he thought their message was clear. He thought they were consistent with the instructions that Mr. Steiner and his crew had received from staff and that the issues were being dealt with and they were still asking that the unusual calendar problem not pose a particular hardship. That's their request.

**Chairman Ludwig** said that the next meeting was 60 days from now which was not an option they like, but he was on the verge of calling a recess and he wondered if Mr. Tull would like to take that now or continue the matter over until tomorrow's agenda. **Mr. Tull** said that he would be glad to supply additional information that would be of use to the Commission.

**Commissioner Heavey** said the Commission has an obligation to the community and to the citizens of the state of Washington to make sure that they properly regulate this activity. He said there were clear indications that the operation of Freddie's is not up to par – is or has some shortcomings, some of which are significant. Licensing may be one that is a bureaucratic foul-up, he did not know, but he said he did know that failing to report two \$10,000 transactions is not a bureaucratic foul-up. He said he did know that the failure to properly have the accounting process in there, the process of making sure that the funds were properly counted, and all these other internal controls as it relates to money are not bureaucratic foul-ups. He said as far as he was concerned the appropriate thing to do was to tell Mr. Steiner he has some problems and if he demonstrates by June that he has resolved those problems, then he can go to step two. To say that, well, to give the director some assurance by May 10<sup>th</sup> and his plan to resolve the problem was not sufficient. What would be sufficient was proof that he would meet the requirements. He had not proved that.

**Mr. Tull** said they intended to supply proof by May 10. **Commissioner Heavey** said they needed proof by conforming to the regulations. **Mr. Tull** said absolutely they would do that by May 10.

**Commissioner Heavey** said that if he did that by June 10, or whatever the June date was, then that would be fine, he could go up to phase II, but to say to the director they will give him a plan by May 10 as to how it's going to be done is not adequate. **Mr. Tull** said they intended that Mr. Bishop would not act unless and until he had proof of full compliance on all these items. It was intended to be proof of compliance. He said he thought they were all in an achievable range but he understood his message. **Commissioner Heavey** said he had great confidence in Mr. Bishop; he voted for him to be the executive director but he is still not the Commission.

**Chairman Ludwig** asked if there would be time tomorrow to hold the matter over and think about it. **Director Bishop** said he would like to hold it over until tomorrow because this was the first he'd seen this report. He said this was not a reflection on Ms. Winslow or her staff. She was trying to work this as fast as they could to accommodate. **Chairman Ludwig** said he realized that and was interested in Commissioner Heavey's comments as well and he thought they would all have time and it was not fair to Mr. Tull or his client to get this report as the hearing is being conducted.

**Mr. Tull** said he would like to have a few minutes on tomorrow's agenda and if they can provide enough information, that would be great. If not, they would have to set this aside. He said it was important to recognize that the test or pilot notion was one of an unusual level of required cooperation between regulator and licensee and the difficulty they face in this circumstance was an unusual one in that staff was its absolute best to produce a review and a report in time for this meeting. Because of the time pressures, as a result of just the vagaries of the schedule next month, they were asking the Commission today to look at it and it turns out that that is an awkward method – it puts absolutely undue emphasis on some of these types of issues. In a proper context with proof that they'd already been dealt with, the Commission would have an entirely different comfort level, so he just wanted to make it clear that they were not attempting to force staff or the Commission or licensee into some sort of awkward situation. He said they understood that this was an evolving regulatory program and they appreciated everyone's past and present cooperation. He said they would supply some additional information tomorrow that might be useful and will see what the Commission feels at that time and he thanked the Commission for their indulgence.

**Commissioner McLaughlin** said she needed to refresh her memory about phase II. **Chairman Ludwig** said it was to raise limits to \$100. **Commissioner McLaughlin** said that this was a matter of \$75 a bet and some more tables. **Mr. Tull** said there were no additional tables; it would be a betting limit increase which has to do with whether you have more people ordering steak versus more people ordering hamburgers. If they order more steak, you might make a better return. It just depends on lots of circumstances.

**Chairman Ludwig** thanked Mr. Tull and in response to Mr. Tull's comments about staff, he wanted to explain that staff were doing yeoman's duty in this case because on the one hand they were being pressured by pending applicants for house banked card games to get their job done and at the same time they were coming up now on phase II reviews and they can't do both as fast as they would like so they appreciated his comments. He called for a short recess at 3:40 p.m.

Meeting resumed at 4:00 p.m.



**Chairman Ludwig** announced the arrival of Judge Marshall Forrest, commissioner.

**HOUSE BANKED PILOT TEST – PHASE II REVIEW**  
**SILVER LANES, Spokane**

**Chairman Ludwig** called attention to the fact that the report on this organization's information had just been received and he hoped there would not be similar difficulties as with the previous organization.

**Ms. Winslow** said Datamak, Inc. owns Silver Lanes. On September 16, Datamak requested approval to bring Silver Lanes into the house-banked pilot study as a level II, phase I participant. Silver Lanes received approval to begin operations on November 14 and they have 10 tables in operation and are open from 10 a.m. to 6 a.m. daily.

**Ms. Winslow** said they will operate 10 tables of house-banked card games and the wager limits have been set at a maximum of \$25. Silver Lanes six-month anniversary date is May 13 and this is the earliest point at which Silver Lanes could proceed as a level II, phase II, which allows up to \$100 wagers. The phase II review for Silver Lanes has been completed. The review procedures are the same as those highlighted in Freddie's Club.

**Ms. Winslow** said a summary of the noncompliance issues include incompatible functions, failure to perform internal control and audit functions, lack of control over NSF checks and sensitive documents, failure to control gaming equipment and supplies, and incomplete records. She said that they were originally going to recommend that the approval be delegated to the director from the Commission. In light of the previous discussion, the staff would like to defer to the wishes of the Commission on this issue and she would also like to state that the time period leading up to May 13 would allow sufficient time for the licensees to correct the deficiencies and they have also begun implementing changes to correct a number of the discrepancies. Also there is a representative from the organization here that is willing to speak to the Commission about their issues if the Commission so chooses.

**Chairman Ludwig** asked if the Silver Lanes representative wished to speak.

**Rick Jones**, gaming operations manager, said he was present at the November meeting at Ocean Shores. They started with five tables; on January 8 they increased to ten tables and took out their poker. On March 8 they increased our gaming tables to 15 so they currently have a maximum of 15 tables. **Mr. Jones** said that through their growth they discovered they had an overwhelming task and it was time to "sharpen the pencil" and get things in line. They have been working closely with the local agents as well as Agent Claudia Biermann who works in the accounting part of the force. Mr. Cheek and Mr. Young were the agents who helped perform the audit and brought to their attention the numerous noncompliance issues they had to take care of and they have made every step to comply. **Mr. Jones** said they have added two additional staff personnel in their accounting department. One has worked for a local accounting firm that has background in doing audits for the tribal gaming industry at Two Rivers as well as another accounting executive so they are working as efficiently as possible to make sure their accounting can be compatible with the fact that they have 15 tables.

**Chairman Ludwig** asked if he were still the controller as well as the gambling manager. **Mr. Jones** said that that job had been taken away from him. He said one of the difficulties they had when they first started was they had five tables and they lost a person to another facility. They have another person who will be coming on board for the house banking. They have lost a floor supervisor. They have found out that as they lead the market they are discovering that the people who are coming on board need experienced personnel and training. So they train them and then they go to other facilities. They have hired two very competent people who will help them with their internal audit, with the general ledger. They also have another person who is charge of their accounts payable and also their NFS check log.

**Chairman Ludwig** asked if Mr. Jones had received a copy of the phase II report and recommendation that the Commission just received. **Mr. Jones** said no. **Chairman Ludwig** asked the staff to provide Mr. Jones with a copy of it if there were any left. He pointed out that the last operator didn't have a copy any sooner than the Commission did either and he didn't think that was very fair, but because of the time crunch he thought it was better to try and do things that are beneficial to the operators rather than the staff in this particular situation. **Ms. Winslow** said she received this yesterday so the staff is trying to expedite these things and be very proactive for

the licensees. She said it was just because of the timing issue and she apologized. **Chairman Ludwig** said he knows the staff is rushing to accommodate the licensee.

**Chairman Ludwig** asked the commissioners if they had questions.

**Commissioner Heavey** said he has the same view of this as he expressed earlier – that they should make sure the changes are made that are required, that they are in operation; that they have followed through and that they should know whether that is being accomplished rather than rushing about as it appeared to him that the staff is rushing about in this whole program trying to get things done. They are running into problems like Mr. Steiner did, where he had to get people in and he didn't know they weren't licensed, but because he needed to have those people there, they worked unlicensed. If they don't get a report until the last minute, he thinks they should slow down and take a breath and do this in an orderly fashion rather than doing it in an expedited fashion that leads to errors. As we all have heard before, "Haste makes waste."

**Chairman Ludwig** asked about the significant change from phase I to phase II. He wondered if he had any idea, for instance, on a weekend, Friday and Saturday nights, what their minimum bet would be on a \$100 maximum table.

**Mr. Jones** said their \$100 table would probably be \$10 minimum, \$100 maximum. They still have the 2 to 10 tables. They have the \$5 to \$25. He said he agreed with the Commission staff in regard to making sure that they were not in a hurry. He said this was as risky for the house as well as the public. He said they have over 60 dealers now on staff and that is much different than when they first started. Some of the dealers are coming on board and once they're done they still don't know what their background is. Sometimes 20 days is not enough even though that's what the Gambling Commission rules allow them. He said they are still finding that maybe they will be into it a month and a half out and all of the sudden a background check on a person shows up with a felony charge. They must correct that situation instantly. He said they want to be the leaders so they are going to make mistakes just like the local agents are finding out and at times it's overwhelming, but they still want to continue and get to phase II and do whatever they can to comply with the rules.

**Chairman Ludwig** said it's pretty clear that the 20-day waiting period after applying and wanting to go to work is being discussed right now. Staff are trying to figure out ways to shorten that or expedite it for instance if your employee is already licensed from a prior card room activity other than house banking – maybe that makes a difference – and there are probably a lot of things that will be discussed so they need to have patience. The Gambling Commission is somewhat overwhelmed both with new applicants from card rooms that want to do house banking plus phase II reviews. He asked if there was a letter from him to suggest going slow on granting new ones. **Mr. Jones** said that was part of the family that is part of the corporation, Datamak.

**Commissioner McLaughlin** said she noticed that in his discussion with the Commission had he used the word, "overwhelming" three times. She said that concerned her about raising limits for someone who is so overwhelmed. **Mr. Jones** said that what he meant by overwhelming was that the staff needed to be created.

**Commissioner McLaughlin** said she understood what he meant, but that he said he trained them and they left and went somewhere else, and so he's going to be constantly doing that and will be constantly overwhelmed. **Mr. Jones** said that, with the payroll that is generated, they went from a staff of 60 to 170. They went from a payroll of roughly \$30,000 to \$90,000, which was their last payroll. Everything has increased, so he wanted to change the word overwhelmed to increased. He said the gaming operation on the floor was running smoothly, regardless of whether it was a \$25 maximum limit or \$100 maximum limit because once they get going, the chip – it's a unit. He said when the cash gets into the drop box, into the count room and into the cage, there was a difference, but at the gaming tables once the supervisor sees the money go into the drop box, it's just a unit, a chip. He said they have to control that but the gaming floor itself is running smoothly. They have four supervisors on staff for the tables that they have, they're training their dealers so they are comfortable with the actual gaming operation; it's the extra little things like security, the surveillance, and the accounting part of it. They are understaffed. **Mr. Jones** invited the commissioners to come and visit his facility when at the Commission meeting in Spokane, which takes place in July.

**Chairman Ludwig** asked if there were any questions. No one had any. He asked what the Commission's pleasure was. He reminded them that they had set over at least until tomorrow to provide an opportunity to Mr. Steiner to respond to any of their questions or concerns, but they hadn't discussed yet doing that with Mr. Jones.

**Commissioner Heavey** said Mr. Jones should have the same opportunity to let them know if he would be willing to wait until tomorrow. **Chairman Ludwig** asked Mr. Jones if he would like to consider this and respond in more detail tomorrow because the options facing the Commission for phase II approval and Mr. Steiner's phase II approval are to wait until the next meeting and see what the situation is then, and it may be important to them to want to comment further, but that was an option he thought he should be entitled to decide.

**Commissioner Forrest** said that the recommendation the staff gave is that the director has an opportunity to approve this. He said there were a fairly substantial number of changes that had to be made and implemented and no one knew how it would go, but in general, he wondered if Ms. Winslow thought this was feasible for them to come into compliance by the May 13. **Ms. Winslow** said that it would be feasible. She said a lot of the issues that were listed in both of the reviews were simply matters of changing the way that they were operating, so it would be very possible as long as they worked on it. **Director Bishop** asked if she or the investigator knew how many discrepancies had been corrected. **Ms. Winslow** said she had been advised that some of them had been corrected. **Director Bishop** said she would probably be more likely to be able to discuss that at tomorrow's meeting. **Ms. Winslow** said she would try. **Director Bishop** said what he meant was that some of the discrepancies could be responded to by explaining how procedures were going to be changed. That is different than if people are not licensed, which requires more time or follow-up.

**Chairman Ludwig** asked if Mr. Jones had planned to stay overnight anyway. **Mr. Jones** said he was. **Chairman Ludwig** asked what the Commission's preference was.

**Commissioner Forrest** said that unless there were some factual dispute that he would be denying some of the discrepancies, he didn't see how tomorrow would be much different than today. **Chairman Ludwig** said the only reason was that the organization just previous to this was given the opportunity to respond in more detail if they wished to do so tomorrow and he thought there was a consensus that they should be treated the same and at the same time. He said that unless there was a strong objection, he thought they should just defer action on this until tomorrow's agenda.

## **PETITION FOR REVIEW**

### **JAMES WYSEL**

**Mr. Thomas Kamb**, attorney for Mr. Wysel, said they sent and the Commission received a copy of a brief in support of their position and they received a response from the Office of the Attorney General.

**Mr. McCoy** clarified for the record that he had had some contact with this case. He said he was the attorney who represents the Gambling Commission itself. He said he was the legal adviser to the Commission as opposed to the advocate on behalf of the staff. However, he had had some contact with this regarding one of the legal issues that was raised in the hearing, so he wanted to disclose that because as a general rule he participates by advising the commissioners during their deliberations if they have issues that come up and if that's an issue, he wanted to raise it at this time so it is on the record.

**Mr. Kamb** said he wasn't at that hearing or the administrative law hearing and Mr. Wysel had come and asked him to represent him at this hearing. He had some contact with Mr. Soltman and he had indicated to him that the Commission is at times more flexible considering these petitions than just the legal issues that are involved. He wondered if that was accurate.

**Mr. McCoy** said he just wanted to put on the record that he had written a letter to the previous attorney with regard to one of the legal issues that was raised. He said in his review of the documents, he noted that the name sounded familiar and the issue was familiar and he just wanted to point that out if there was a problem with his participating as the adviser to the Commission at the time they do their deliberations, then he would excuse himself. **Mr. Kamb** said he didn't see a problem at this time, but appreciated his disclosure. He said they were more asking the Commission to look at this in the totality of the circumstances rather than in the specific details. **Mr. McCoy** said the issue that he dealt with was fairly narrow.

**Chairman Ludwig** asked if Mr. Kamb was aware of the procedures; that he was allowed 10 minutes and then Ms. O'Neal would be allowed 10 minutes. Because of the time considerations they wouldn't be able to go into executive session and deliberate on this issue until later. **Mr. Kamb** said he was familiar with the procedures and he understood the time element. He said he had submitted in his brief what he believed were the important aspects of it and he thought that their review of it he would not use their time to do that. What he wanted the Commission to be aware of was that there seemed to be a lot of confusion at the previous hearing about Mr. Wysel's distinction between the two petty larceny convictions. He said he did not provide this, but showed them a copy of his application which listed a '92 petty larceny which was not related in any way to a gambling conviction. He did not make any disclosure on the application of any gambling conviction because those records were sealed out of Nevada. He had been told that this state's Commission would apply the law as it was in effect from the state that rendered a decision, which, in this case, was Nevada. And because of that, they had sealed these convictions and they would no longer be allowed to use his record against him. He then wrongly assumed that this state would also do that. **Mr. Kamb** said the investigator, through his own investigation, was able to turn up these records through a different source, but while he did that, Mr. Kamb said he didn't believe that he realized that they had been expunged and when he got into it and he saw a larceny conviction he made the jump that that was for the gambling-related conviction and not, in fact, what it was actually for, which was a shop-lift situation.

**Chairman Ludwig** asked Mr. Kamb if he would agree that when he did bring it up – maybe through a mistake on his part – in spite of the sealing of the record, he was reporting to the Commission the prior petty larceny conviction which was gambling related. **Mr. Kamb** said he thought it was actually an issue brought up by Agent Holland and in his testimony and then he was asked to explain it. So, from a technical standpoint, but he didn't think he ever brought it up. Mr. Kamb believed that the agent brought it up and then he was asked to respond to it.

**Chairman Ludwig** said he responded to the Nevada conviction which was later sealed by court order.

**Mr. Kamb** said that was true, but the reason he did that was because Agent Holland had confused the two of them and was referring to them in two different manners. He said it was the type of thing, once brought up it has a tendency to grow from that, but it wasn't initially brought up by Mr. Wysel.

**Mr. Kamb** then introduced Mr. Wysel who wanted to give a short statement for the Commission.

**James Wysel**, petitioner, said he was a little bit nervous about getting his message across. He said it was the best of his understanding his denial was based on 12-year old records that had been sealed and as a result, his actions in dealing with those records when he filled out class II applications with Indian casinos. He said he wanted to explain what happened.

**Mr. Wysel** said that when he came to Washington to start his life over, he knew he could get a class II license at an Indian casino. He had friends working there and they told him to come up. They were interested in felony convictions. When he filled out his class II gaming licenses with the Indian casinos at Tulalip, Lummi, and Swinomish, he did admit part of his criminal history. He worked under the class II license in these casinos for about three years. He rose to assistant card room manager at Lummi and worked there for two years; he taught many of the people there how to deal and on through the management process. He was also voted the "Employee of the Month" at Swinomish when he was there for eight months.

**Mr. Wysel** said he remarried, bought a house and settled into a productive lifestyle. In April of 1995 Swinomish casino investigated his application as a class III license and terminated him because of his past criminal history. It was security personnel at Swinomish that told him about sealing the records. He said he wasn't aware that he could do that. If he had known that that option was available, this incident probably would never have come up. He would have had it done before. He immediately started the process to have the records sealed. It took about a year. He was under the impression that the records had been completely sealed when he applied for work from Gil Pegram at the Sports Keg. He was honest and up front with him. He self reported everything about himself. Gil based his decision to hire me on my record in Washington and he went through extensive background with the people he had worked with, customers that he knew, and he hired him because of his integrity and honesty in telling his whole story and he liked that.

**Mr. Wysel** said that when it came time to apply to the Washington State Gambling Commission for a Class III license, he consulted with the lawyer that did the sealing and worked for him and he told me that he was not supposed to have to put that down. It states in those sealing that it supposedly had never happened. So he didn't include them in his application. He did list anything else that had happened to him throughout his whole life at that time, which included a petty larceny charge in Bowhead City, Arizona. Gambling was not even legal in Arizona at that time. It had nothing to do with anything in gambling and it was not on the record. The only reason that the Washington Gaming Commission even knew of that petty larceny was because he self reported it. It was confused with the other one that had been sealed that happened in '86 which was 11 or 12 years ago.

**Mr. Wysel** said that he had tried to cooperate with the Commission throughout the last two years in every way possible. He said he had been in contact with the staff on a monthly basis. He said he had been totally open with them throughout the entire process, but he feels that there has been some confusion in the petty larceny charge of '92 and the petty larceny charge of '86. The '92 larceny was not a gambling charge. What he was trying to show the Commission is that he was not threat to this industry and have been openly and freely self-reporting to his employer and to the Gambling Commission since applying to the Commission for a class III license. He said he had been working in the gaming industry for three years without any incidents whatsoever and he has not had anything on his criminal record since 1992 and since the sealing of his records 12 years ago. He said there was nothing in his record that would require denial from the Commission.

**Chairman Ludwig** stated what his understanding was about the facts – that even though at the hearing before the administrative law judge, the agent who testified, Mr. Holland, in response to Ms. O'Neal's question that the failure to disclose in and of itself wouldn't have supported his recommendation in this case for denial, and even if they gave his answer full weight – the prior conviction that was sealed – the '85 conviction of petty larceny in Nevada involving gambling was in fact sealed – and through whatever reasons – confusion on Mr. Holland's part or Mr. Wysel's part – the information came out – despite all that – Washington State's statute, RCW 9.46, says this Commission can consider any of that information. And if it came to light through somebody's confusion, it's not a bar for the Commission to consider it.

**Mr. Kamb** said that now that the Commission was aware of it, they had a lot of flexibility to consider all types of factors. He said that he did not dispute that at all, but the question to him was, technically, how did it come forward? He used as an example a jury who was instructed to disregard the last statement they heard and you look over at them with their big eyes and their mouths are hanging open.

**Chairman Ludwig** interjected that the Gambling Commission staff and their agents are not supposed to disregard it. He said he was concerned with the general careless use of sealing and expunging records and vacating convictions, and confusion among lawyers as to what's the effect. More than that, if his record is sealed, why are these agencies furnishing that information on request, specifically the FBI. If it's sealed, it's sealed; and they shouldn't be divulging the information. But that is not the Commission's problem. He said they had to separate that issue from this issue. We know now, both from the record, from the admission, that he does have, in 1985, a conviction in the state of Nevada. That's not been expunged; it's been sealed. The convictions stands, but still, they understand his conduct that led up to all of that was a crime involving gambling. **Mr. Kamb** agreed, and went on to explain the nature of that violation. He said that when they were here before the Commission, not only did they realize they were aware of it now, but they wanted to point out that this was a 12-year old event, now going on 13, and that it involved what they call "cherry squeezing" of a machine which is a slot machine where if while you're playing a cherry comes in the left corner, if you grab a handle just right, you can squeeze a couple coins because of the way the machines are set up that they'll drop out.

**Chairman Ludwig** said that had been explained thoroughly either in the record or by Mr. Holland. **Mr. Kamb** said that the nature of the offense was such that they call it a petty larceny, but it really was a very minor offense in the sense of conduct. He said it was not the type of conduct that would occur now because there are no slot machines at this point in this state and it seemed to him that part of coming before the Commission they realize they are aware of this conviction, which happened 13 years ago. The nature of the conviction was such that there were some mitigating circumstances relating to it as it pertains to his license to work in this state. He said they were in a situation where he is here with the support of his owner-operator, Mr. Gil Pegram, and if the Commission wished to question him, he was available in the audience.

**Mr. Kamb** said they were just asking the Commission to consider all of the factors in deciding whether to deny Mr. Wysel's license. His employer thinks he is trustworthy; this is a very old situation; he actually did to his best of his knowledge give the information as he thought he should have. He said that if the Commission is allowed by law to do so, they might allow him to operate under very strict probationary period. Mr. Wysel wants to show the Commission that he is trustworthy and that he is not a danger to the industry and he understands the seriousness that goes with the regulating of the industry and goes with the public perception of how it's handled and the way gambling is looked upon by a large part of the public.

**Commissioner Forrest** asked what Nevada required to seal the record when they come in later on.

**Mr. Kamb** said there was a time frame and he did not know how long the period was but that Mr. Sysel seemed to think it was a five to ten year period of good conduct, no gambling-related incidents. The nature of the initial charge he thought may come into it.

**Commissioner Forrest** asked if it were a discretionary decision by the Court or if after the proper time elapsed the person was entitled to apply to seal the record. **Mr. Wysel** said it was not an entitlement, but a determination that was made when a person applied to have his record sealed. He said it was a lengthy process. **Mr. Kamb** said that he was sure it was a case-by-case basis based on the facts and the seriousness of the original charge.

**Commissioner McLaughlin** asked what the conviction was for larceny involving gambling activity in 1992. **Mr. Kamb** said that was where the confusion lay. The conviction in '92 related to the theft, shoplifting of some cigarettes. He said there was no gambling larceny in 1992. That had nothing to do with gambling.

**Chairman Ludwig** pointed out to Mr. Kamb that he had said that the administrative law judge erred in her conclusions of law number eight on page nine of the initial order that said "The 1992 larceny conviction in and of itself is a basis for denial of Mr. Wysel's application because the offense involved a gambling activity." **Mr. Kamb** said that was correct that that statement was in error. The testimony of Agent Holland gave confusion to the two larceny convictions and the larceny and the gaming violation occurred in 1985 and Mr. Wysel has had no gambling violations since 1985 and those had been subsequently sealed by the state of Nevada.

**Chairman Ludwig** asked if he were suggesting that the administrative law judge would have made the same ruling if she had realized she was talking about the '85 conviction. **Mr. Kamb** said he did not know.

**Commissioner Forrest** asked if it was correct that in the first application he submitted in 1992, that he failed to report his arrest and conviction. **Mr. Kamb** said that what had happened originally was that he had applied through the Tulalip gaming and then to move out into the main portion of the casino and apparently the Indian gaming licenses are a class 2 and don't before the Gambling Commission. **Commissioner Forrest** restated what he heard Mr. Kamb say was that the application was incorrect; that it was to the Tulalips rather than to the Gambling Commission and they shouldn't worry about it or be decisive. **Mr. Kamb** said he was not saying that they shouldn't worry about it but it wasn't his intent to have it brought to be used in his later application and in fact that application was never processed and the transcript indicates that and so does the brief of the respondent. He did disclose that and that was also part of the basis and he wasn't aware that it was going to the Gambling Commission. When he became aware of it, he tried to remedy that.

**Chairman Ludwig** asked if he had suggested earlier that the Swinomish Tribe was only concerned about felony convictions. **Mr. Kamb** said he had not said that, but that during the course of what Mr. Wysel prepared, he had indicated that when he moved here from Nevada, his friends had indicated that he could probably get a license to work in a casino – not necessarily a Washington State Gambling Commission license – if you had no prior felonies. **Chairman Ludwig** said he didn't know what the tribal application asked. **Mr. Wysel** said he didn't think it related just to felonies only, but he was not sure about that. **Chairman Ludwig** said that if Mr. Wysel was correct and it didn't relate just to felonies, even though it wasn't his intention to submit that application to this agency, he did not disclose that crime to the tribal gaming authorities. **Mr. Kamb** said that was correct and their brief had indicated that. He said that was the second basis the administrative law judge made the ruling and that was why he would not be able to say how she would have ruled if she were aware of the first mistake because he thought there was also this secondary issue, but it was his belief that once that record was sealed, he no longer was responsible to disclose it.

**Chairman Ludwig** noted that they had allowed Mr. Kamb well over the 10 minutes, but they had asked a lot of questions, so it was now Ms. O'Neal's turn to speak.

**Ms. O'Neal**, attorney for Commission staff, said that she would agree there were two larceny convictions – they were both the same misdemeanor level, petty larceny level crimes. The 1985-86 incidents included three incidents of cherry squeezing (which has already been described earlier), which had resulted in a conviction for one count of petty larceny. She said there was some confusion at the hearing between Agent Holland describing his investigation process and what had been disclosed and not disclosed, but she believed it was clear from the record that the administrative law judge was concerned with the 1985-86 gambling violations as she did know those were in 1985-86 – she knew that there was a considerable period of time that had gone by and she was weighing the violation of gambling laws against the period of time that had gone by in combination with the failure to disclose.

**Ms. O'Neal** said she thought Judge Forrest was correct – the failure to disclose was not just in this most recent application; the failure to disclose, as Mr. Wysel admitted at the hearing, was on at least the prior tribal applications which were submitted before the records had been sealed. Those applications, in the same way as the Commission's do, ask the applicant to list all prior arrests and convictions. Mr. Wysel responded to that question by not disclosing the prior arrest and conviction for gambling offenses. So, it was true that one could perhaps understand the failure to disclose on this most recent application although he didn't ask the Gambling Commission for clarification before he responded to a question incorrectly on the application. But he did seek legal advice from his attorney and it could be understood that once having received that legal advice, why he didn't disclose it on his most recent application. She pointed out that the earlier failures to disclose on the three tribal applications must also be weighed here as part of his past conduct.

**Ms. O'Neal** said the agent was concerned and staff that failure to disclose weighed on the other side of the scale when there is a person who is going to be responsible for not only his own conduct but for the conduct of all of the people who participate in the gaming activity at the licensed premise. He is going to be responsible for making sure that all of the other participants obey all of the gambling laws as well. So it was the agent's concern and the staff shared that concern, that the prior violations of the gambling laws and the failure to disclose those in 1992 and also in the most recent application in '96 combined together, it would not be in the public interest to grant the license to this person to be a gambling employee in the card room.

**Ms. O'Neal** also pointed out that he had support from other people who he has worked for in the past, but all of those people at the hearing testified that his past criminal behavior was something that they would like to be aware of before they hired him. They might make a different decision than the Commission would or than the staff would about how to evaluate that conduct, but they all agreed that they wanted to know about that past conduct in making their decision about whether to hire him. He told the Commission in his statement today he provided that information to Mr. Pegram, his most recent employer, even though the records were sealed; he told Mr. Pegram about his past criminal conduct. If he had done that on his application to the Gambling Commission, the staff might well have looked a bit differently at his application.

**Ms. O'Neal** said he chose not to do that and staff urged the Commission to weigh carefully all of the information that they had before them. It was a discretionary decision; the statute gives them the authority to weigh the information and to decide in the public interest whether to grant the license and that is one of the main ways that they regulate gambling activity. There is in the statute specific authority for them to deny a license based on past criminal violations of gambling laws and failure to disclose. That is what the staff would urge them to do.

**Commissioner McLaughlin** said she thought it was Ms. O'Neal who appeared before the Commission on an ALJ decision in which there was a violation of the Gambling Act in the state of Washington and it was at the time they talked about when is there a correct time to expunge somebody's record – give them another change, in other words. She said it seemed to her that was a lot longer than this '85 conviction, but she wondered if she were right or wrong.

**Ms. O'Neal** said she was correct that they had had that discussion; it was longer. She thought it was perhaps 14 or 15 years. **Commissioner Heavey** reminded her that it was also a much more serious crime. **Ms. O'Neal** said it was a bookmaking conviction. **Commissioner McLaughlin** agreed. **Ms. O'Neal** said it was a bookmaking conviction on Mr. Frey's part and she said there was no set timeframe beyond which such convictions will no longer be considered. The statute gives the Commission the authority to consider that conduct without putting a timeframe on their consideration and at some point they would probably decide that it doesn't weigh as heavily as if were a very recent conviction; that's a discretionary decision on their part. They are entitled to weigh the violation against how long since it was committed. **Commissioner McLaughlin** said the other part of her question was that they sent that back to the ALJ because of whatever reason it was and in this case, if it was true that the ALJ made the decision based on the wrong time of a conviction for petty larceny of a gambling activity, she wondered if they should do the same type of thing here – send it back and find out if that's what they ALJ really meant. **Ms. O'Neal** said she would argue that from the transcript, they could tell that she was aware of the timeframe since the incident had occurred. She perhaps was unclear about exactly when the conviction finally came down, but she was clear that the incident had happened in 1985 and 1986. **Commissioner McLaughlin** said she was aware the incident had happened, but in her conclusions she said 1992. **Ms. O'Neal** said her argument would be that that difference in timeframe didn't play a large role in her decision; **Ms. O'Neal's** reading of it was that the combination of the failure to disclose and the gambling violation, the judge felt it was not in the public's interest. **Ms. O'Neal** said that in her mind that the discrepancy about exactly the year of the conviction finally came down was significant.

**Commissioner Heavey** asked **Ms. O'Neal** if it was her position that the failure to disclose the gambling conviction and the application to the state after the record had been sealed was a "failure to disclose?" **Ms. O'Neal** said she would argue that it was a failure to disclose. **Commissioner Heavey** said that she was taking the position that if a Court says to a person "I'm going to defer sentencing you if you behave yourself for a year, then I'm going to dismiss the complaint." It was her position that then the person should disclose that even though that's not a conviction. They should say they've been convicted even though they haven't been convicted. **Ms. O'Neal** said she believed that was the legal answer because of the statute that allows the Commission to consider not only convictions but arrests and that specifically authorizes them to consider criminal history that has been dismissed or expunged. She said she believed the correct answer was there is an obligation to disclose all of that past criminal history. **Commissioner Heavey** asked if that were true even though a Court order said when they are asked that question you can say no. **Ms. O'Neal** said she understood and she did in her argument and her brief indicate that they can perhaps understand how that could happen and he did seek legal advice. He didn't ask anyone at the Gambling Commission whether it was okay not to answer accurately the question. He did answer in a way that he knew was not truthful although he did seek legal advice. **Commissioner Heavey** asked how that was not truthful when the order said a person could say no. **Ms. O'Neal** said that it was because the question he was asked to answer under oath says: "Disclose all of your prior arrest and all of your prior convictions." **Commissioner Heavey** asked how many times had she seen a situation where the Court has found a fact that is not a fact. **Ms. O'Neal** said she was not sure she understood the question. **Commissioner Heavey** said facts were facts, but the facts really are in a lawsuit what the Court cites facts as. **Ms. O'Neal** said that was correct.

**Commissioner Heavey** said that they have a Court that says the answer to that question is no and so **Ms. O'Neal** was saying that means nothing. **Ms. O'Neal** said she was not saying it meant nothing. She said she was saying that's not a correct answer in that context because of the statute that specifically authorized the Gambling Commission to consider that information. She said that if a person were applying for employment at Sears she thought that was correct advice; he would not have to disclose it.

**Commissioner Heavey** said he understood her position. **Chairman Ludwig** asked if it would be better to say "I was arrested and the case was dismissed." **Commissioner Heavey** said he did not know what the application asked. **Ms. O'Neal** said it does ask for all prior arrests and convictions.

**Chairman Ludwig** said that part of the confusion in this case and many others is that they talk about dismissals, expungements, and sealing records. Sealing a record does not remove the conviction. It's sealed. Another crime or something else can unseal it, but they use those phrases interchangeably and they don't mean the same thing. **Commissioner Heavey** said that this was an order. **Chairman Ludwig** said he realized it was a Nevada order.



**Commissioner Heavey** said the order was specific and read, "All proceedings recounted in the record are deemed never to have occurred, and that petitioner may properly answer accordingly to any inquiry concerning the arrest and the events and proceedings relating to the arrest." That says it never happened.

**Chairman Ludwig** asked Ms. O'Neal if he was correct that she was arguing that at least in 1992 to the Tulalip Tribe it wasn't sealed and he didn't disclose it. **Ms. O'Neal** said there were applications to three different tribes, all of which asked for prior criminal history, and there was a failure to disclose on all of those. **Chairman Ludwig** asked Ms. O'Neal whether, even if those were sealed, they know about them in this case because they were discussed and they were discovered through some means. He said he was concerned about that, but that was not relevant. **Ms. O'Neal** said that was because sealing doesn't remove it from his criminal history. Anyone who is entitled to do a FBI check will get that information. **Chairman Ludwig** said that they shouldn't get it and that's what he has problems with and it is not relevant here. They got it. He said that somehow in this case they have been discussing a 1985 petty larceny, which involved gambling, and the findings of fact or conclusions in paragraph 12 talk about 1985 and 1986 convictions that involved illegal activity. He said that they knew '85 was the cherry squeezing. He wondered what happened in '86. **Ms. O'Neal** said that the problem was that there were three separate incidents that resulted in a conviction for one count. **Chairman Ludwig** asked if they were the same time, same activity. **Ms. O'Neal** said that was right. She said that it was common that he would not be charged for each of the incidents, that they will be bundled together as one charge, which is what happened here. He was not charged with separate counts for each of the incidents. **Chairman Ludwig** said that his conviction was in 1985 and was sealed. **Ms. O'Neal** said that the incidents were '85 and '86 and the conviction was '86, but it was sealed.

**Commissioner Forrest** said ex-judges like to think their orders are honored and asked them to assume that the person who was involved and reported this and called in the police felt strongly enough that when he heard about this he wrote to the Gambling Commission and said "Look, this joker is no good. Here's what happened." He wondered if the Court could seal the victims or other people involved in the crime from disclosing those facts.

**Commissioner Heavey** said he didn't think that. He said he just thought that what they were saying was that "You've never been arrested; you've never been convicted." So when somebody says, "Have you been arrested and have you been convicted?" the truthful, legal answer to that would be that legally he can say no – that doesn't change any facts except that he can say no. And if the information comes out otherwise – and it came out otherwise – it came out through one of the files in one of the Indian tribes that information was contained in their files, so he apparently had disclosed it to somebody because they had it in their file and that's where the information came from according to his reading of the material in front of him. He said that didn't change any facts. The point that he wanted to make was that in 1995, failure to disclose was a basis for denying the license, but it doesn't seem to him to be supported by the factual information. Now, maybe they can and should say, "Well, you were convicted in 1985; we don't think that's long enough," but to say that he failed to disclose, if that in and of itself was a basis, he didn't think that was supported by the fact that he was told by a court, "You've never been arrested, you've never been convicted, so say no." **Commissioner McLaughlin** said it was difficult to understand, not being an attorney.

**Chairman Ludwig** clarified that that goes to the issue of non-reporting but that it still disturbed him that the order said "public or private company, agency or official named herein, including but not limited to Washoe County Sheriff's State of Nevada Criminal History Records Depository and the Federal Bureau of Investigation. He said it had no business giving this agency that information. But now this agency has it and they can use it, but it bothered him that those people ignored judicial orders. **Ms. O'Neal** said that was exactly what would happen in Washington as well if they were to do a criminal records checks through the State Patrol on someone who had records sealed in this state, they would get back that information. **Chairman Ludwig** asked if she meant that the State Patrol didn't follow court orders. **Ms. O'Neal** said she doesn't advise them, but she was just telling them that she had that experience and that she knew that she would get back criminal history record information that included convictions that had been sealed. **Chairman Ludwig** said that because that was not relevant to the discussion here he would not pursue it any further.

**Mr. Kamb** said he thought the Commission had a good understanding of what had occurred. Their position basically was that in '96 he did not fail to disclose. In '92 on the lesser applications, he did fail to disclose this but not to the Commission and, while Commissioner Forrest did bring that up, it is was their position that he honestly has been acting in good faith with the Commission and that he didn't fail to disclose.

**Chairman Ludwig** said the Commissioners understood that position. He said they would address the issue again later. He said their respective feelings about court orders and agencies probably didn't bear on the decision anyway.

#### **OTHER BUSINESS/GENERAL DISCUSSION**

**Chairman Ludwig** asked if there were any comments or questions from the public on anything. He said there would be an executive session following this meeting.

**Mike Orteg** said his family owns the Sports Center in Yakima Washington and he had been trying to organize a house-banked pilot program in Yakima at their place and he said he didn't realize that it wouldn't be until August before they have a walk-through inspection and he noticed how busy the staff and Commission was but he wanted to ask if they could do what they could to help them get going as soon as they could. They are anxious to get started. **Chairman Ludwig** said the Commission itself only meets once a month, but the staff is very busy. He noted that his application was in.

He adjourned the public meeting at 5:08 p.m.

#### **EXECUTIVE SESSION**

## WASHINGTON STATE GAMBLING COMMISSION

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### MINUTES COMMISSION MEETING FRIDAY, APRIL 10, 1998

**Chairman Ludwig** called the meeting to order at 9:30 a.m. at the Inn at Semiahmoo, Blaine, Washington. He introduced the WSGC staff and Commission members at the head table.

**MEMBERS PRESENT:** CURTIS LUDWIG, Chairman; LIZ McLAUGHLIN, Vice Chair; EDWARD HEAVEY; and PATRICIA L. HERBOLD

**OTHERS PRESENT:** BEN BISHOP, Executive Director;  
SHERRI WINSLOW, Division Director, Field Operations;  
CALLY CASS-HEALY, Division Director, Licensing and Financial Investigations;  
CARRIE TELLEFSON, Division Director, Policy, Planning and Support;  
DERRY FRIES, Division Director, Special Operations;  
JONATHAN McCOY, Assistant Attorney General; and  
SUSAN GREEN, Executive Assistant

### APPROVAL OF THE MINUTES FROM THE MARCH 12-13, 1998, MEETING

**Chairman Ludwig** asked if there were any changes to the minutes from the March 12-13, 1998, Commission meeting held in SeaTac. With the exception of Commissioner McLaughlin, who was not at the last meeting, all of the commissioners have had a chance to look over the minutes. No one had corrections or changes. He said the minutes stand as printed.

### STAFF REPORTS

#### UPDATE ON CARD ROOM ENHANCEMENT TEST PROGRAM

**Ms. Winslow** said the card room enhancement program has begun to face some difficulties in scheduling in recent months. They expect to see more with additional workload increases from phase II to reviews and monitoring. They are analyzing their options and have formulated the following plan for current operations. With regard to staffing issues, there are currently eight special agents performing card room reviews for operators seeking to enter the house-banked card games test.

**Ms. Winslow** said two agents are assigned to reviews with each spending approximately 50 to 60 hours. Phase II reviews that they are beginning to conduct should take approximately the same amount of time. One agent is assigned full time as a card room coordinator and this person, in addition to performing card room reviews, spends time conducting research on assigned issues, reviews promotional schemes, drafts correspondence on card room issues, and drafts addenda to appendices. The remaining seven agents are each assigned geographic areas with approximately 100 licensed establishments for which they are responsible. Their routine duties are in addition to the card room reviews that they conduct.

**Ms. Winslow** said that in order to effectively monitor existing card rooms offering house-banked card games, in addition to those that will be approved in the future, they will be able to conduct only three reviews per month.

They have found that in attempting to complete more than three reviews per month, there isn't sufficient time to perform routine monitoring of the existing house-banked card games. There are currently 11 operators approved to offer house-banked card games. Two phase II reviews were also conducted during March. Because of the number of upcoming phase II reviews and the limited staff time available to conduct initial reviews and the phase II reviews, the question was posed as to what the priority would be. They resolved to conduct reviews of the new house banking operators before starting any phase II reviews. It was also decided to allow the phase II reviews to be completed based on the willingness of staff to work overtime and the licensee's willingness to pay for it. All work on the phase II reviews will be done on a voluntary overtime basis. Field operations staff will continue to serve as a primary workforce and they have asked that the tribal gaming unit staff assist, as long as they do that on the overtime basis.

**Ms. Winslow** said the following schedule of the new house-banking operator reviews has been developed. She said she would go over the particular schedule unless there were questions. She said they were only scheduling out for four months in advance. Based on the list they maintain, they anticipate that there will be enough operators interested in offering house-banked games to schedule three reviews per month until at least 1998 and possibly further out.

**Ms. Winslow** said that on the scheduling of phase II reviews, they felt that would be dependent upon the number of operators approved to operate house-banked card games, the willingness of staff to work overtime, and the willingness of operators to pay for it. They foresee almost all operators requesting approval to operate under phase II. Preliminary discussions with staff indicate that enough will be interested in working overtime to complete all reviews through at least the end of 1998. A 1998 tentative phase II review schedule is available if any one has questions. They expect some operators may choose to wait for their phase II reviews to be completed until they could be performed on a non overtime basis.

**Ms. Winslow** said that WAC 230-40-999 --Public card room enhancement program pilot study and test -- requires Commission staff to submit rules for formal implementation of the program with the goal of implementation by January 1, 1999. In order to meet this goal, rules would have to be filed by the August Commission meeting. This would require staff to develop rules almost immediately. They feel the test has not operated long enough to develop rules at this time. Addenda are still being made to appendix C. It is their recommendation that the test be extended until June 30, 1999. This would give them sufficient time to fully implement the test and develop the necessary rules.

**Chairman Ludwig** asked if that could be done by rule or within the language of the statute. **Ms. Winslow** said she thought so. **Chairman Ludwig** said that, even though it was a little early, he wondered if she had identified specifically any area that they might be changing from the temporary rules. **Ms. Winslow** said the temporary rule was very basic -- it sets out the deposit schedule. Appendix C is basically the operating rules for the house-banked program and they have drafted several addenda to that appendix C, so they modify things as they go along and are learning along with the licensees. The staff feels that, as they move further into the test and they do additional phase II's, they will find that some things are not operating the way that they would choose them to operate and they will have to make further modifications. **Chairman Ludwig** said that during yesterday's study group with commercial operators he wondered if they discussed that option of moving ahead faster with phase II reviews at an overtime rate.

**Ms. Winslow** said she deferred to the report today. She explained that she would be speaking about scheduling issues on today's report, but she did not specifically.

**Chairman Ludwig** asked if she got any comment pro or con from those operators.

**Ms. Winslow** said they didn't speak about the overtime during the study session, so there wouldn't have been a pro or con.

**Senator Prentice** wondered if the staff merely rated the participants and told the participants what was wrong and then expected them to find their own management consultants if they needed them or did the Commission staff have a role in advising them. She said she was thinking about the testimonies of the participants yesterday and the fact that it was a brand new program and they seemed to need help in getting over this hurdle.

**Ms. Winslow** said that from the start they offer quite a bit of assistance in the development of their internal controls. A number of the operators seek help from consultants that help them expedite the process. It's expensive to have the WSGC staff provide assistance, but some operators choose that option. She said that as they find problems they give them the best guidance that they see possible to correct the solution without becoming a management consultant. She said they have to keep their independence and are careful not to be overprotective in that environment because ultimately the decisions have to be made by the owners and managers of the businesses.

**Senator Prentice** said she was a former in-service director from the nursing home industry where she had been through a lot of surveys and there were some things that jumped off the page at her yesterday during the testimonies. An example she gave was to be simple and procedural where they would have said, "Institute procedures that do thus and so and you have to have a basic orientation," or even the fellow from Spokane where he got caught without the right people because they were getting hired away. They might suggest cross-over training and things like that. She said she didn't know what the Commission's appropriate role was, but obviously this was an expansion for them, too, and they're getting into a different arena. She said she was trying to look at what's practical for Commission staff, but obviously not weighing them down with an expectation that they were the management consultants. That was the reason for her question.

**Commissioner Herbold** said she recalled that the Commission inserted a phrase in the rule – it was an amendment that date of January 1, 1999 they added "or such earlier or later date as the Commission determines." She said she thought they may have allowed for that.

**Director Bishop** said if that were the case they would not need to change the WAC rule. All they would need is something on the record saying that they were going to extend it. Or he could write a letter under their direction to the licensees and communicate that.

**Chairman Ludwig** asked for audience members to comment on the concept of using overtime help. No one came forward.

#### **INTEREST IN SEPARATE BUSINESS RULE**

Repealed Section WAC 230-30-220 – Interest in separate business involving punchboards and pull tabs at a different marketing level prohibited.

New Section WAC 230-30-225 – Interest in separate business in more than one marketing level

**Ms. Tellefson** said this item is up for final action today and has been before the Commission for quite some time. The staff became aware of a potential problem with the way that the new rule in item 3(b) is written and the way that it's written could provide a loophole where a manufacturer could ultimately have an interest all the way down to an operator. There are a couple of options. The staff looked at the rule that's up for repealer and revisiting it, it doesn't look so bad. It keeps the protection in place that they were concerned about and keeps the integrity of the pull tab business intact also. However, the one issue that would not be addressed if they withdrew their proposals altogether is the exceptions set forth in item(b) section 5. That was for people like Mr. Ebel, where they have a spouse who perhaps is involved as a distributor and the other spouse is an operator. Their first inclination was to ask the Commission to withdraw both proposals. An alternative to that, however, would be to withdraw their request to repeal item 3(a) – keep that rule intact – and with item 3(b), delete section 1, 2 3 and 4 of that rule and keep section 5 intact, so that would become the new rule that would be in place after the introductory section in the rule. She said she realized this was confusing and that they had just had this brought to their attention before the meeting.

**Commissioner Heavey** asked if, when he sees a question in a rule and then an answer to that question, was that a rule or was that an advisory opinion? **Ms. Tellefson** said she thought it was just a style format. **Mr. McCoy** said that is the new method of writing rules. He said the answer to that was that there's a process that has been put in place for a couple of years now which is along the lines of the plain rule writing system. Agencies are encouraged to promulgate the rules in this sort of question and answer format. He said it was part of the regulatory reform process. **Commissioner McLaughlin** said it was also to get rid of old verbiage.

**Commissioner Heavey** said that in the '80s Congress pushed through the reduction of paperwork and it resulted

in an increase in paperwork. He said he had the feeling these questions raise more questions than they do answers and he does not like the style and he didn't know that they had to adopt the style. If the rule needs an explanation, then he would suggest that an explanation be put in there rather than some hypothetical question that probably meets very few factual circumstances. **Ms. Tellefson** asked if any of the other commissioners have thoughts on this issue. She said the staff have taken this general direction. A lot of their attorneys have gone to the regulatory reform classes and clear rule writing classes and she said it was always a challenge to write clear rules and they are working on it constantly. She said any direction or feelings from the Commission would be greatly appreciated on that. **Commissioner Heavey** said he has found that the most compelling thing about changes are that there are changes. Not that they accomplish anything, not that they're better, not that they're more sensible, but they're changes. He said he did not know that this system helps one bit – in fact he didn't think that it does.

**Commissioner Herbold** said that she was going to comment in connection with section 3 rules and some later on that the changes that the Commission is making she thinks are convoluting the concept that they are trying to get across. They may ask a question and give an answer but sometimes the answer is so obtuse that an ordinary person can't understand it, so if the goal is plain and simple language that the ordinary person can understand, that's not happening. She said she had read lots of rules in her life and sometimes she has to read these rules three and four times to try to figure out what it really says, so she did not think they were accomplishing the goal in all cases.

**Chairman Ludwig** said he shares the views of Commissioner Heavey and Commissioner Herbold. For example, if my spouse is a substantial interest, that's part of the rule, that question, and that's an explanation and ought to separate the substance of the rule. **Commissioner McLaughlin** said she has no feeling about it one way or the other; she just reads them. **Chairman Ludwig** said he doesn't think the commissioners are suggesting that this current rule be amended other than as she suggested. He said he thought her recommendation was to withdraw rule 3(a) and amend rule 3(b) by deleting paragraphs 1, 2, 3 and 4. **Ms. Tellefson** said that was correct.

**Commissioner Herbold** asked if item 5 would be added to the now not repealed rule. **Ms. Tellefson** said they considered that, but Jon McCoy's suggestion was that since 3(b) is a separate rule they could keep that intact and just have subsection 5(b) in essence item 3(b) and then if they ever wanted to make changes to that they would have that in place. **Commissioner Herbold** asked if this is something that had to be done today because it would be helpful to her to look at the end product next time. **Ms. Tellefson** said there is a timing problem with item 3A. They have 180 days to take action on it and that timeframe would expire prior to the June meeting. It doesn't mean they can't re-file it.

**Mr. McCoy** said the effect of that, since it is a repealer, is it simply would not be repealed. The only other aspect of that is the personal appeal with regard to the individual mentioned earlier which was sort of the impetus to the rule, but that's the Commission's choice.

**Senator Prentice** said what she was wondering if the idea is that they want the rules to be readable and useable. She wondered if the people who use them, the users out there, might also have an opportunity to comment. Maybe it's okay and they understand it. It's clear to them, but maybe not to members of the Commission. If it's helpful, then it might be all right, and if it's not helpful, they'll tell the Commission.

**Chairman Ludwig** thought that was a good suggestion and wondered if there was anybody there who wanted to comment about the discussions they've had on the format of these rules with the questions and answers. **Chairman Ludwig** asked if there were anyone present who would like to comment.

**Robert Saucier**, Mars Hotel, said he concurs that sometimes when people try to make things simple, it becomes more complicated or if people try to provide more disclosure, people end up learning less. He gave an example of the extensive paperwork needed to buy a house to protect everyone's rights and people have no idea what they're signing. And with regard to the question and answer format, he had found the questions to be more difficult. He didn't know if there were something in APA that required that format, but the questions oftentimes make it difficult. In lieu of that question and answer format, it would make more sense to present the rule and then almost like they would do with case law, cite examples that came up, so that people can understand real life examples beyond the rule itself to explain what that means.

**Chairman Ludwig** asked for the Commission's pleasure.

**Commissioner Heavey** moved that section 5 be amended to strike "if my spouse is a substantial interest holder in punch board or pull tab operator manufacturer distributors will I be considered." Strike that, and put a capital of the "A"; remove the question mark and put "means." He said he just defined substantial interest holder.

**Commissioner Herbold** asked if that weren't before. **Commissioner Heavey** said he took out all the question stuff and he moved they adopt the recommendation of the staff. **Chairman Ludwig** asked if that was to 3(b).

**Commissioner Heavey** said yes. **Chairman Ludwig** called for a second to the motion. **Commissioner Herbold** said the New Section WAC 230-30-225 would then be just what is now presented as 5 (a) – (d). **Ms. Tellefson** said yes. **Commissioner Herbold** said that they may not even need the question; just the statement. **Commissioner Heavey** said they didn't need the question; all they needed was a substantial interest holder in the same business means. The hypothetical question is not needed. **Commissioner Herbold** wondered if they needed an introduction or if they start out by saying, "For purpose of this section." **Ms. Tellefson** said section 5 was an exception to clarifying that a spouse because it's a community property state a spouse is considered a substantial interest holder under some of their other rules. And section 5 would be a compliment to item 3(a) so it would be the exception to item 3(a) as opposed to the actual rule of what a substantial interest holder is. That is the intent. **Commissioner Herbold** asked if that were 3(a) of this new section. **Ms. Tellefson** apologized and said it was item 3(a) would be the general rule and the prohibition and then if they take item 3(b) and focus on section 5 that would be the exception for when somebody would not be considered a substantial interest holder – when a spouse would not be considered such - so that the prohibition on holding an interest in a business at a separate marketing level would not apply.

**Commissioner Herbold** said that instead of saying "For purposes of this section only," the new WAC rule in item 3B would say "notwithstanding the provisions of 230-30-220, the spouse of an individual et cetera."

**Commissioner Heavey** said he accepted that amendment; **Commissioner Herbold** seconded the motion as amended.

**Chairman Ludwig** said that it had been moved and seconded that item 3(b) an amendment to WAC 230-30-225 be amended to delete everything down to paragraph number 5 and to change paragraph number 5 as just suggested by Commissioner Herbold. He called for any further discussion. There was none.

*Vote taken; motion carried with four aye votes.*

**Chairman Ludwig** said the commissioners had still not commented on the withdrawal of 3(a). **Ms. Tellefson** said they would like to withdraw the repealer. **Chairman Ludwig** asked if there were any objection on the part of the Commission to the withdrawal. There were none and he announced that item 3(a) was withdrawn.

#### **GAMBLING SERVICE SUPPLIER DEFINED**

Amendatory Section WAC 230-02-205 – Gambling service supplier defined

**Ms. Tellefson** said item 4(a) is the definition of gambling service supplier, and this rule actually corresponds with the items in section 5 also. It defines gambling service suppliers and it exempts those that are providing non management record keeping services when the gross billings do not exceed \$50,000 from being considered gambling service suppliers and there's a separate rule that is proposed in item 5 that specifically defines those that fall into that other category. The staff is recommending further discussion on this rule. She said there had been some changes at the suggestion of Commissioner Forrest last month to clarify gross billings, as opposed to total income, because income is a difficult number to determine sometimes.

**Chairman Ludwig** asked if there were any questions or comments from the public in attendance. There were none and he announced that this would be back on the agenda at the June meeting for final action.

#### **GAMBLING SERVICE SUPPLIER RULES**

New Section WAC 230-02-208 – Punchboard and pull tab service business defined.

Amendatory Section WAC 230-04-119 – Licensing of gambling service suppliers  
Amendatory Section WAC 230-04-124 – Licensing of manufacturer, distributor, and gambling service supplier representatives  
New Section WAC 230-04-133 – Punchboard and pull tab service business – Registration required – Procedures – Restrictions  
Amendatory Section WAC 230-08-025 – Accounting records to be maintained by distributors and manufacturers  
New Section WAC 230-08-026 – Accounting records to be maintained by gambling service suppliers

**Ms. Tellefson** said item 5 was up for discussion and possible filing today and Director Cass-Healy had been working with this group of licensees for a period of a few months trying to work out the details of provisions for licensing, accounting, record keeping, and all those types of issues. This package is a culmination of those meetings. These are six rules. Item 5(a) defines what a punchboard and pull tab service business would be and that's those low-level businesses that don't fall into the gambling service supplier rule. Item 5(b) requires the storage and counting services to pay contract fees and prohibits also a gambling service supplier from holding a substantial interest in a manufacturer or distributor. Item 5(c) states that a gambling service supplier representative may have an interest in a licensed manufacturer or distributor, but when they provide services to operators, they need to inform the Commission the operator and the manufacturer or distributor of such relationships. Item 5(d) provides that a punchboard and pull tab services and those low-level businesses must register with the Commission and then it sets forth permit fees. And (e) and (f) set forth accounting records that must be maintained by gambling service suppliers.

**Ms. Tellefson** said this is just up for filing today and staff is asking that they file the rules for further discussion.

**Chairman Ludwig** asked about item 5(b) paragraph 7, the underlying change, if that does pretty much what the amendment to WAC 30-30-225 did. He asked if it was a duplication. **Ms. Tellefson** said that this just clarifies that the same exception would apply for a gambling service supplier as it would for an operator and a distributor. **Chairman Ludwig** said the other one was general punchboards and pull tabs and this is gambling service suppliers so he could see the need for both of them. He called for any discussion or questions by members of the Commission.

**Commissioner Herbold** called attention to 5(a) item 3; they have \$50,000 spelled out and the number. She pointed out that in the previous one 4(a), they crossed out the number and she wondered why they were being inconsistent. **Ms. Tellefson** said that was incorrect and they would conform the two.

**Chairman Ludwig** called for further comments or discussion from the Commission and from the public. There were none and he called for the Commission's pleasure regarding the proposed filing of the rules listed in item 5(a) - (f).

**Commissioner McLaughlin** made a motion that the proposed rules listed in item 5(a) - 5(f) regarding gambling services suppliers be filed for further discussion; **Commissioner Forrest** seconded the motion.

*Vote taken; motion carried with four aye votes.*

### **NON-PROFIT LICENSING REQUIREMENTS**

Amendatory Section WAC 230-04-064 – Certification procedure – All licenses – Formal commission approval  
Amendatory Section WAC 230-08-122 – Annual progress and financial report – All nonprofit and charitable organizations  
Amendatory Section WAC 230-08-255 – Bona fide charitable or nonprofit organizations – Significant Progress  
Repealed Section WAC 230-12-060 – Charitable or nonprofit – Bingo – Special review  
Amendatory Section WAC 230-30-052 – Punchboards and pull tabs operated by charitable and nonprofit organizations – Net income required

**Ms. Tellefson** said item 6 is five rules for possible filing today regarding the licensing of non profit organizations and there are changes to this process. Item 6(a) requires those licensees that are group IV or V to have a representative from the organization present when they do the qualification reviews. Group IV or V are licensees that list receipts over \$3 million. Item (b) requires the same group, to submit financial statements that are prepared by a licensed CPA. Item C reorganizes the rule regarding when an organization is making significant progress. It sets forth additional circumstances under which failure to use at least 50 percent of the gambling



income to provide program services or failure to keep supporting services expenses at less than 35 percent would be acceptable. This goes back to the qualification review yesterday on the Imperials where that issue came up about not having a building that they could depreciate or they were using volunteers. Basically, they would have less to write off. So this allows those circumstances to be considered when an organization is being reviewed for significant progress. It kind of reorganizes the rule so that it makes a little more sense and the same exceptions would apply if somebody were trying to get an exception to this 50 percent to be spent on program services or the 35 percent to be spent on supporting services.

**Chairman Ludwig** asked about 6(a), the requirement that somebody be in attendance for a qualification review. He said he thought that would be very helpful to the Commission, but maybe somebody who has had a little problem meeting their minimum requirements and while it's not an enormous amount – there's some expense attached – and it's a legitimate business expense to them, but he wondered if there were a provision in there that they could get a waiver of that requirement. **Ms. Cass-Healy** said it was not currently in the rule, but the staff had discussed that option and they were willing to put that in there if that were the Commission's desire.

**Chairman Ludwig** said he didn't think that would be a problem, but it was nice to have it. **Commissioner Heavey** did not agree. He said those who had problems and chose not to come would have to take the consequences. He said organizations needed to take responsibility for being in the audience to answer questions when they know there may be questions on their report. He saw no reason to require people to come if everything looked great and they choose not to come, that should be okay. **Chairman Ludwig** asked in that regard did they get a copy of the report and recommendation well enough in advance to make that decision to come or stay home.

**Ms. Cass-Healy** said that they do get copies of the reports. They do have about a week to call and ask staff questions. They talk to them prior to publishing the report about staff's issues. Part of the reason the staff is proposing this – it did come from staff – was so that staff could provide the Commission timely and accurate information if the commissioners have questions; for example, about the internal workings of the gambling operation or board decisions that they wouldn't have immediate knowledge of. It was more of a convenience for the Commission and the staff at this point and they felt not necessarily a hardship for the organization. They have not heard any comments back at this point.

**Commissioner McLaughlin** said that one comment she heard at the meeting was that they schedule Commission meetings in the areas of the people who have qualification reviews. She said that up until now it hasn't been so important because they weren't absolutely required to be here. She said that in most cases they would be able to be present, but there could be an exception in a hardship case.

**Commissioner Herbold** said she agrees with Commissioner Heavey in that, if there is a glowing report, they don't need to have a representative there. If they know it is not going to be a glowing report and the Commission will have questions, or they can assume they will have questions, it's in their best interests to be here, but to make it a requirement. She said staff might suggest that there are some things in the report that will raise questions on the part of one or more of the commissioners and it would be in your best interest to be at the meeting, but she couldn't see the necessity of changing a rule for it.

**Chairman Ludwig** said there are times when the commissioners want to ask questions that have nothing to do with the report or the financial statistics. He said they might want to ask them where they picked the name for the establishment, as has been done, and things about their program which are informative and nice to hear, but not really relevant to the report. He said his feelings one way or the other were not strong if they don't file that one or they could file it and discuss it further along with the others.

**Ms. Cass-Healy** said she doesn't have a particular desire one way or the other, but there was another change in the rule that deletes the provision for the special review and it's related to another rule in this package and she wanted to point that out. **Chairman Ludwig** said that's was an option which they don't have to do.

**Ms. Tellefson** said one of the items in the package that she did not summarize for the Commission was item 5(d), which deletes the whole rule regarding special reviews. The Commission hasn't had a special review in three years or so. Their new net income requirements and the process they go through for net income compliance has addressed most of the issues that the Commission used to look at in special reviews.

**Ms. Cass-Healy** said that is found in WAC 230-04-064. Item D (3) just deletes the reference to a special review because the last item 6(d) of this package repeals that rule, which had not been discussed yet.

**Commissioner Herbold** said it would be helpful to have an experienced commissioner explain the concept of special reviews and how and why they have been used. **Commissioner Heavey** said there was an operation years ago in eastern Washington that was a family-run organization and for every dollar that went into charitable causes, about four went into the pocket of the family, but it was quite a problem so the Commission did an examination and decided that the manager ought to find other employment, so the manager found other employment, but took with her a \$1,000 retirement program. When the license renewal time came up, they said that if they wanted to continue the retirement program she would have to get her money from someplace other than bingo, so they decided that they would eliminate the retirement program and continue to be a licensed bingo operator. He said that was the only special review that he specifically remembered, but he didn't know that the process was required now under the way they do things. He didn't know that they would require a special review to accomplish those same objectives. He said he assumed that was why they wanted to take this out because they now have other methods available to them to accomplish the same objectives that was accomplished in that particular situation. **Ms. Cass-Healy** said the special review process is basically redundant at this point. They have rules that have come into place since the beginning of this process that cover the issues that were addressed in the special reviews. **Commissioner Heavey** said the example that he gave was the impetus for changing the rules. **Ms. Cass-Healy** said that was correct.

**Chairman Ludwig** asked the audience if any member of the public that wanted to comment pro or con about whether they should file this packet including item 6(a) or not including item 6(a).

**Commissioner Heavey** asked if it would be helpful if they put in there "at least one representative at the request of the director shall be present." **Director Bishop** said that would give them the option in case the staff had a lot of questions that couldn't be resolved. It would allow them to go forward and it would be helpful.

**Commissioner Herbold** said that, in Item 6, was one of the examples she was going to use in her comments earlier about plain and simple language. She said this one was extremely confusing. It talks about functional expenses and then program expenses and deletes functional expenses and then supporting services. She said there were references about services where she wondered if they were talking about program services, supporting services, functional expenses, both, all of the above – she just found it very confusing. When the reader comes to the new part in section 5, she has all kinds of changes – periods that threw her off as dangling participles, things that made it very difficult for her to read. She said she was not suggesting that she rewrite it and was not sure what the answer was. She said she would be willing to sit down with someone who did write it and they could talk about it. She said in its current form it was a mess. **Ms. Tellefson** said these rules were pushed onto the agenda faster than they normally would have been, but most of the rules that come before the Commission in packages were written by the staff and, if they have time, they go over them with fine tooth comb, which they sometimes do and sometimes don't. She said they would have a chance to look at them during the next few months while they were being discussed and refine them. **Commissioner Herbold** said she didn't have a problem with filing, but she wanted to talk to somebody about cleaning it up.

**Commissioner Heavey** moved to file the packet of rules in 6 with the one amendment in 6(a) that says "at the request of the director at least one representative from the organization." **Commissioner McLaughlin** asked if he meant that the only time this representative needed to be at a public meeting was at the request of the director. **Commissioner Heavey** said yes, if the director requests it, a representative must be present; if not, they don't need to be present. Or, to make it a little clearer, it could say "only at the request of the director."

**Commissioner Herbold** seconded the motion.

**Chairman Ludwig** said that it had been moved and seconded that the Commission file for further discussion the rules listed in item 6(a) through 6(e), and called for further discussion or questions. No one had comments.

*Vote taken; motion carried with four aye votes.*

**Commissioner Heavey** said it was his understanding that these rules were filed with the understanding that rule 6(c) will be clarified. **Director Bishop** said Director Cass-Healy would be working with Commissioner Herbold.

### **PUNCHBOARD/PULL TAB RULES AND HOUSEKEEPING CHANGES**

Amendatory Section WAC 230-08-017 – Control of gambling equipment – use of identification and inspection services stamps  
Amendatory Section WAC 230-30-030 – Punchboard and pull tab quality control program – special inspections, defective devices, reimbursements and fees.  
Amendatory Section WAC 230-30-040 – Bonus pull tab series – Definitions – Restrictions  
Amendatory Section WAC 230-30-045 – Pull tab series with carry-over jackpots – Definitions – Requirements  
Amendatory Section WAC 230-30-070 – Control of prize – Restrictions – Bonus Prizes – Displaying – Procedures for awarding  
Amendatory Section WAC 230-30-080 – Punchboard and pull tab series restrictions – Prizes, size of game, and location of winners  
Amendatory Section WAC 230-30-106 – Punchboard and pull tab flares restrictions – Standards – Substitute

**Ms. Tellefson** said in Item 7 are seven rules up for discussion and possible filing today: Item 7(a) is a housekeeping change; Item 7(b) changes the rule regarding the return of defective punchboard and pull tab series to the manufacturer; Item 7(c) is a housekeeping change; 7(d) clarifies the payout requirements in punchboard pull tab games that have carryover jackpots to ensure that the prize payout limitation is not exceeded; 7(e) is a housekeeping change; 7(f) is a housekeeping change and also clarifies that carry-over pull tab prizes may exceed the \$500 prize payout limitation; and 7(g) is a housekeeping change to make the language consistent with statutory language regarding the amount of the prizes that have to be displayed and marked off of a pull tab flare, so when the prize is over \$20. The staff recommends filing for further discussion.

**Chairman Ludwig** asked why there was a need for a rule and the reasoning behind a rule that says “cash may not be awarded in lieu of a merchandise prize.” **Ms. Tellefson** said she did not know for sure, but guessed that it might mean that it is hard to determine what the value of a merchandise prize is, so if a player is going to ask to exchange cash for it, that could be debatable. **Chairman Ludwig** said it is somewhat related to discussions they’ve had regarding markup and value of the merchandise. He then called for comments, questions, or discussion.

**Commissioner Heavey** moved to file the rules in section 7, with the request that a rule be drafted to eliminate hypothetical questions and simply set forth requirements for the rule. **Commissioner McLaughlin** seconded the motion. **Chairman Ludwig** said that it had been moved and seconded that the Commission adopt these rules with the elimination that the rules be filed for further discussion with the elimination of any hypothetical questions presently contained therein. He then asked if the public wanted to comment. No one came forward. *Vote taken; motion carried with four aye votes.*

### **PETITION FOR RULE CHANGE BY WASHINGTON GAMING CONSULTANTS REGARDING PULL TAB GAMES**

Amendatory Section – WAC 230-30-050 – Punchboard and pull tab operation

**Ms. Tellefson** said Julie and Ron Porter are the petitioners and they will explain the petition.

**Julie Porter**, Washington Gaming Consultants, said they were petitioning for a rule change to WAC 230-30-050 regarding what a “held” game is. This practice has been going on for many years in the industry and has recently come to their attention. A lot of operations are in violation of current WAC rules. What happens is a player is playing a game and for some reason they’re into a game quite deeply and they have to leave, either because the establishment is closing or they need to get home or whatever and they want to keep that game on hold so that they can come back and play the game. What happens then is that the operator will take the game down from the display and put it in a covered container so in storage so that they free up display space to put a new game in so that they have a complete display to offer new customers who come in. It’s mainly an issue of customer service. It’s a customer-driven policy. The customer wants the protection in the game; they want to have the chance to win their money back and so operators have been providing this service so that they don’t lose their good customers.

**Ms. Porter** said that because space and storage is such a premium they need to free up the display space so they put it underneath the counter so that when the customer comes back they can play the game again. At issue is whether or not a person can transfer the game into a different container and put it in storage. They are requesting that the rule be changed for that reason. Currently, the rule does not allow an operator to change the game from one container to another. It also must be in public view and they request that the game be placed in the immediate area; for example, under a counter or in a cabinet.

**Chairman Ludwig** gave a hypothetical example of a player who has played a lot, lost some money, doesn't have any more cash on him, and he's asked the operator to hold the game while he goes home to get more money from his spouse. **Ms. Porter** said it could be that or as simple as someone who has to go to work or go home and is just finished playing for the day – for whatever reason, they can no longer continue playing right then. She said that from a customer service perspective, if a player has put \$300 or \$400 into a game and the operator says, "Whoops, sorry, I get your money," then the player may not come back and play in that establishment. So it is something that the customers have wanted over the years and that the operators have provided. She said many establishments do this regularly and are unaware that they are in violation of the rule. She said her own operation has done it for the last 15 years and they have posted rules that say, "We hold games." But it's just gotten by everybody and they recently found out that it is a violation of the rules. She said she was speaking to another consultant recently and asked him if he was aware of the rule and he said no he wasn't and many of his clients store their held games in paper bags, so it's quite a common practice.

**Chairman Ludwig** asked if what she was proposing the petition as a benefit for the player, not the operator, except that the operator can put another game into play. **Commissioner Herbold** said she would be interested to hear the staff's opinion on this and asked if seven days was a little long. **Ms. Winslow** said they are currently working with the licensees. There is the potential that the staff will come forward with a proposal that will have additional controls so that they feel comfortable with it. They have discussed it and they have some reservations, but they feel they can work something out in this area.

**Chairman Ludwig** said he suspected there were a number of people present today who have pull tab/punchboard licenses and he opened the discussion to them. There were no comments by them, the Commission or staff.

**Commissioner Heavey** moved to file it and **Commissioner Herbold** seconded the motion. **Chairman Ludwig** said it had been moved and seconded that the petition by Washington Gaming Consultants be filed for further discussion. It will be on the agenda again in June. **Commissioner McLaughlin** asked if somebody has had a game held, why don't they just buy out the board. She said it's not really gambling if they buy the game if it's held for them. **Chairman Ludwig** said it would depend on what the cost is and what was remaining. **Commissioner McLaughlin** said that they were going to play it until they win. **Commissioner Heavey** said they are going to play until they think they've won all they are going to win. **Ms. Porter** said if the player has the game on hold, the chance exists that when they come back, the first ticket they open could be a winner. **Commissioner McLaughlin** asked if that was the point at which they would quit. **Ms. Porter** said yes, that's when they would quit and the game would then be out of play. It's been written into the rule so that the game never goes back into public play. They have also written in the rule requirements for bookkeeping to track the game every day that it is being held. **Commissioner McLaughlin** asked if they would only play one pull tab. **Ms. Porter** said the possibility existed that they may end up having to buy out the game but they will play until they have minimized their losses. **Commissioner McLaughlin** said they do play more than one pull tab. **Ms. Porter** said that was right but they don't want to have to buy out the game because the chance exists that they're not going to have to. **Commissioner Heavey** said it still was discretionary with the operators as they were not obligated to hold the game.

**Senator Schow** asked if once the game was removed and held for that customer, it never went back to the public. **Ms. Porter** said yes, that was correct; it had been written into the rule. **Senator Schow** asked if the operator had the option of not having the game held. **Ms. Porter** said they must have posted house rules whether or not they will hold games or not hold games. So if they do hold games, they also have specific rules how long they can hold the games, what it will take to hold the games so the customer has knowledge of what they will have to do in order to hold the game. **Senator Schow** asked if the issue is, once the game goes on hold for somebody, then the question is whether they leave it on the back bar or whether they put it in another

container. It can't go back to the public. **Ms. Porter** said that was correct; that was one of the staff's concerns and they had addressed that in the rule.

**Chairman Ludwig** asked if that meant that after that player that asked to hold it comes back and plays a couple more pull tabs, at the operator's discretion, then it can go back into public play. **Ms. Porter** said that was correct, it never goes back into public play. She said it was a matter of tracking the game, which was what the staff was concerned about. Typically the game is either dead and the operator has lost money and couldn't put it back into play because there's too many winners off of it. **Chairman Ludwig** said the players lost enough money that the operator may think it's time to pull the game. **Ms. Porter** said that on held games she would agree with that, but they have tracked held games because they keep separate records of which games are held, and statistically the operator doesn't have a lot to gain on that. It's mostly for customer service.

**Director Bishop** asked what the legal status would be if an operator failed to follow their own house rules. For instance, if a house rule is if someone has played \$50 worth they can hold the game; then they do not comply with that. The Gambling Commission would get the complaint and he wanted to know what would be the legal status when a complaint was received. **Mr. McCoy** said this rule, as he understands it, would authorize the creation of house rules on procedures for how this was going to be done. By adopting those house rules, they would be creating an addendum to this rule and their failure to follow their house rules, which were promulgated under this section would then become a violation of this section. **Director Bishop** asked if that needed to be put in the rule. He didn't expect an immediate answer. **Chairman Ludwig** asked if that would result in civil cause of action. **Mr. McCoy** said there probably would be one, whether under rule or not was another question. He thought they would have a basic contract-kind of argument that if they're not following their house rules and there's already a violation of a contract. In terms of the question that Mr. Bishop asked, he thought it would create the possibility of charging them for violation of their own house rules.

**Ms. Porter** said the legal issue was one thing, but it was not in the best interest of the business to violate their own house rules, because they would lose customers. The driving force for any operator is to keep their customers. She said it is good there is legal backing, but also she said she couldn't think of operations that would violate a posted house rule. **Director Bishop** said that, as the prizes go higher and higher, he might disagree with that. For example, if they had a \$10,000 prize, there might be some option. He said he would like Mr. McCoy to give some advice on that. If need be, they would add that as a staff proposal. **Mr. McCoy** said there were provisions in the card room rules that do require posting the house rules and the violation of those rules involve the same repercussions that would result in a violation of the Commission rules.

**Chairman Ludwig** reminded the audience this would be up for further discussion at the next meeting.

**Senator Schow** gave an example of someone putting \$200 into pull tabs and they don't win anything and they say they want the game held and they come back two hours later with \$100 and they still don't win and now they've got \$300 into the game and what happens if that game doesn't come off or is not pulled. He wanted to know what happened next. He said no one was there. The game is on hold either under the counter or with a tag on it that says "game on hold," the player is putting another \$100 down and is now out of money so they leave, and the game is out of play. But what happens if it doesn't get removed? How do they control that? **Mr. McCoy** said a partial answer would be that it's going to be a market-driven thing. That if players are in the habit of doing that then the house would probably be disinclined to allow them to put things on hold because they wouldn't be getting enough play off those particular devices. He said he thought there is an issue there with regard to how they're handled that needs to be addressed. In essence, it becomes a game where the player is playing directly against the house since there's only two parties to the transaction – the operator and that one player rather than the pool of players. **Senator Schow** said the other part of the scenario would be if he came back with his \$100 and won \$500 and now he is way ahead and the house has lost \$200 on that game, but the rule says it's apt to pull that game even though it's a \$200 loser. There may be a temptation there to say "Well, let's just leave the game up and maybe somebody else will come in and put the \$200 in."

**Commissioner McLaughlin** thought that they have to mark off the flares. **Chairman Ludwig** said as a practical matter no one was going to play it if they marked off the flares as they should. **Senator Schow** said that there were still five \$100 winners and all he had won was three of them and he had his money back. **Mr. McCoy** said the discussion from a regulatory standpoint raised a good question as to how those are going to be handled.

**Chairman Ludwig** said that they don't under any other circumstances tell an operator when they can't pull a game or when they have to pull a game. **Mr. McCoy** said he was not aware of any rule that required or prohibited them from pulling a game when in their economic interest they want to pull it.

**Chairman Ludwig** said this would be on the next meeting's agenda for further discussion.

*Vote taken motion carried with four aye votes.*

**Chairman Ludwig** called for a short recess.

## **UNFINISHED BUSINESS**

**Chairman Ludwig** said the two phase II reviews that were held over from yesterday would be heard now. Mr. Steiner's review was first yesterday. He asked Ms. Winslow to bring the Commission up to date on anything new they may have learned since yesterday.

**Ms. Winslow** said Freddie's Club phase II recommendation was given yesterday. She assigned a field agent to go out to Freddie's Club and attempt to verify the correction of items that were noted in the review and to briefly summarize the work that was performed of the items that were noted during the original review; ten of those items had been corrected and four of those items are in the process of being corrected.

**Ms. Winslow** said that the licensee is continuing to work on items in relation to the report before the commissioners on page 4 item 6 has a notation about the independent checking account for all PSJ teams. The licensee did show them that they do have check #2504 for a newly-established account. They have just not had the time to verify that that account exists. In addition, in item 7, where they have concern about the security department being independent from other departments, procedures have been changed and they suggest that observation is warranted in that situation. Continued observation is needed.

**Ms. Winslow** said that in item 9 of the report, they noted that the signature record information has been partially corrected. In staff's opinion, the problem noted there that continues to exist is immaterial. In the last item, that is in the process of being corrected. The licensee's accounting system record keeping system is being changed from a float basis to an imprest basis. The staff is reviewing the records later today with one of their tribal gaming unit agents and they are in the process of establishing a general ledger system. She also wanted to note that the concerns expressed over the licensing issues have been corrected as of this date. There were a number of changes made including waivers being granted, employees moving on to other departments, licenses being obtained, and then employees actually switching duties, so everything has been corrected in that particular area.

**Ms. Winslow** deferred to the licensee's representatives to go ahead and come forward unless the Commission has questions.

**Chairman Ludwig** asked if, based on this update and what she's learned over the last 24 hours, the staff's recommendation regarding phase II for Freddie's Club in Renton has changed. **Ms. Winslow** said the staff recommendation would be to continue to consider approval being delegated to the director upon correction of the violations. They would still like time to monitor the progress of the organization and they feel that since they do have up until May 10, 1998, the licensee would be able to make additional changes and the staff would still be able to monitor to see that the changes that have currently been made are continuing to be corrected and that they could develop a comfort level that they will continue in this vein.

**Commissioner Herbold** said she would like to recommend that, in the future, as the phase II reviews are presented to the Commission, she would prefer to see them only when the complete package was ready to go instead of with contingencies and noncompliance that they have to go through this process that they went through yesterday and now today. She said she knows this particular case is a difference of a month for the operator, but she said her feeling was that as a Commission they have an obligation to the public at large to make sure that this is done in a public fashion and done the right way. She said she feels that delegating it puts the final decision in a non public forum and it's important for all of the licensees to understand how important compliance is in this regard because it is a test program and it does make a difference whether things are being done properly. She

said it wasn't that she thought they wouldn't be, but the public appearance in a test program like this is very important, so her feeling was that they would wait until June to vote on it.

**Commissioner McLaughlin** asked for an explanation of the part about licensees on the side of #1 in appendix C, page 2 in handwriting: "Only one of the nine employees received a waiver; all others were not listed in our license brief and did not receive a waiver."

**Ms. Winslow** said that that might have been a little bit more verbiage than was necessary, but it was attempting to explain that only one of the nine employees that were identified originally had actually received a waiver. The other employees -- the problems -- were noted by those employees either no longer being employed at the establishment, moving onto other positions, getting their licenses, so it was just handled in different ways. It was not very good language.

**Commissioner McLaughlin** said she wanted to be sure it wasn't that they hadn't applied for a license. **Ms. Winslow** said that was correct.

**Chairman Ludwig** observed that the situation with these first two phase II reviews gives a good, clear example of the time impact on the staff and not being able to do applications and phase II without making some adjustments as suggested. He said he was aware that the director has suggested doing these phase II reviews on an ongoing basis if at all possible and not waiting until the end of the six months.

**Director Bishop** said it came to the staff going through this that there is a certain degree of unfamiliarity with the internal controls at this level by licensees. They know they have to have them; they've got a consultant to put it together for them, but in some cases they don't really understand. They have a requirement now that when they go to phase II they must have an internal audit function. He said that if they'd had an internal audit function at the start of these, they would not have had these discrepancies because someone that understood an internal control system would have caught all of these in a normal course during the six months, he feels fairly confident, so his suggestion would be that they change schedule C effective with all licensees that are in the program that they get an immediate internal control function as a part of their system. He said that should the Commission elect to carry this forward, he would also like to condition that that it would be with the understanding that that occur immediately with these licensees.

**Senator Prentice** said that during yesterday's presentation, she had to remind herself that this was a test and with a test, all of them are to be learning something that's going to be applied for any new applicants, but she remember Mr. Tull's comment about this not being for the fainthearted and looking at the results yesterday and thinking it looked pretty overwhelming -- someone was criticized for being overwhelmed -- but she thought the Gambling Commission staff was also overwhelmed because this was very definitely a change. But the other time crunch was because they are not having a meeting next month. They would have been better prepared with documentation to have shown them that the corrections had been made, so some of the Commission's negative perception was due to something that happened that they didn't cause. She had been thinking if they had made a colossal blunder in the Legislature by allowing this, she would rather know it sooner than later. She said she was a little hesitant to speak because Freddie's was in her district just a couple of miles where she lives. However, she remembers lobbying the Governor, Senator Schow was prime sponsor, she was second sponsor, and she lobbied the City of Renton to lay off giving them additional hard time saying this is going to work out okay and then seeing these results and thinking, "Isn't it?" However what they are saying is, then, that this is a test; we're going to institute a new method, new procedures because some of them would have been so easily corrected and they could have proven that the changes were already being instituted. She cautioned the others to be a little careful about how negatively they look at it whether or not they make the decision to okay them, that was their decision. She just wanted it to be on record and that the legislators need to take a good look at this also.

**Senator Schow** said that he echoed when Senator Prentice had said. He doesn't think they should be saying to Freddie's or any other establishment, because this is new, it's new for staff; it's new for them and he thought everybody was doing their very best to make this work, but he doesn't think they should say that because of not having a meeting next month or whatever, that it's going to be the business that takes the blunt of that decision. They have done a good job of showing that they're correcting things. Staff has shown that they are on top of this

and he didn't think the Commission should say to the business, well because of short timeframe or whatever reason that we should say to you you have to wait another month. He said this was a learning period for both staff and the businesses and he thought that at this point in time, he didn't think there was anything that really went wrong. He thought everyone had done a great job and deserves the compliment for how well the establishments have run and how well staff have done their work on top of it. He would hate to have them wait until June just because of circumstances beyond staff's control or beyond their control.

**Chairman Ludwig** asked for any further questions or comments.

**Bob Tull**, attorney representing Freddie's Club, said yesterday that the deficiencies would be corrected and he was pleased that he could tell them today that they appear to be corrected and that the items that required, by their very nature, further checks were the only things that they couldn't say were currently corrected. The items that had been vexatious in this process are on the business side of the operation by in large. He referred to page four of the detailed report yesterday, the one that was attached to the summary that talks about the undercover surveillance that was conducted of the gaming operations. The paragraph reads: "We requested assistance from SIU to observe gaming" and it goes on through. "The purpose of verifying patron's wages were within the approved wagering and to observe dealer procedures. He said that those who had had a chance to watch how procedures are operated or how they're supposed to be monitored, they would know how important that is for what is called game control. It's critical to make sure that cheating is not taking place.

**Mr. Tull** said that on one occasion during their observation – he said people who go undercover with funds supplied to the Commission by the licensee – they have to take on good faith that they will get the winnings back. He said he didn't know if there were any accounting of the losses, but it is all recorded on tape anyway so there's no need for concern.

**Mr. Tull** said that on one occasion, a player put a bet on the table and then realized it was over the limit and removed it from the table. The dealer didn't see the change in bets. Mr. Tull emphasized that "otherwise no exceptions were noted." He said that was a critical finding in a review by an undercover person of how the games are being conducted. He said that all they talked about yesterday were the list of deficiencies which they had reasonable verification that corrections were already in place.

**Mr. Tull** said the other concern yesterday that had caught Commissioner Heavey's eye was about whether necessary reports to the federal government were being made for large cash transfers. He said that was a critical issue in regulation and also in law enforcement in general and especially in the casino environment. As he handed out some packets of photocopies of the report that were filed timely and a report that had just been prepared and will be filed to complete the reporting process. He said they would see in there some W9 forms which were contemporaneously prepared and submitted. Then, in addition – and this was the deficiency that caught Commissioner's Heavey's eye yesterday -- the document was called "Casino Transfer Report," the CTR, which was not filed. He said that was a mistake that is being remedied, but it was crucial for them to understand that reporting to the federal government did take place and the operators know they have to do both.

**Mr. Tull** stressed to all concerned that the critical regulatory issues are being addressed already and that the mandatory control compliance issues, as they are being identified, are being corrected. He agreed with Director Bishop that internal types of reviews would serve to catch these types of deficiencies and ought to be installed. He said those services would be contracted or arranged. He said they would have to get a combination of accounting expertise brought to bear and people who can do game observation to make sure that game control is handled.

**Mr. Tull** said that the person with the most at stake economically is the owner, who has to be increasingly diligent. He said staff had tried to be constructive each step of the way which is commendable and not a source of irritation within the industry at all. He said he or the owner would be happy to respond on the various points if there are questions about the forms. Mr. Rick Davis, who is one of Mr. Steiner's managers, is here today along with Mr. Steiner. Mr. Tull asked that, in light of the verified status of these matters, that the Commission would deem this to be an appropriate way to move forward; that they simply say that the deficiencies have been corrected. Those that require by their very nature a bit more observation are the ones that Mr. Bishop should be assured are taken care of. If the normal regulatory process is as he understands it, in these licensee



environments, the Director can go in or have the staff go in with or without phase II reviews, with or without wagering limit increases, and monitor these types of things when and as he deems necessary. He said they were not making some new delegation of authority whatsoever; they're trying to stay well within the framework of the system that's been involved.

**Mr. Tull** said he appreciate Commissioner Herbold's and other commissioners' observations about the sensitivity of this. He assured the Commission that Mr. Steiner, his organization, and others in the industry want this to be done right. They think it is unfortunate that a combination of circumstances, including things for which they have to be responsible themselves, created yesterday the impression that here were a bunch of problems and not enough being done. He thanked Senators Schow and Prentice for their remarks earlier and he agreed that it would be appropriate, naturally, to receive permission after verification that these measures are still being taken care of to proceed with the increased wagering limit. They think it is very reasonable, very fair and completely within the regulatory control of this agency.

**Chairman Ludwig** referred to page two of today's report where it's been adjusted, there is a question about one employee, Sheila Lock, who has not paid her full application fee and at this point she's still considered to be unlicensed and she's still employed. He asked if it were customary in the industry that the employee pay the fee.

**Mr. Tull** said that was true generally speaking. He said this employee did submit a check and he had a photocopy of the application and a copy of the SeaFirst cashier's check that bears an issue date of November 5, 1997. He said there are notes by someone at Freddie's saying that Jacki [Fischer] from the Gambling Commission confirmed that the check was cashed. He said they do not need to be reminded that they must have a system in place for these licenses gone astray. Freddie's does now have in place a tickler system on a calendar that lets them track licenses.

**Chairman Ludwig** asked what the fee was for a key employee card room license. **Mr. Tull** said he did not know. **Ms. Cass-Healy** said the fee was \$261. **Chairman Ludwig** reiterated that the employee – the licensee as a key employee – pays their own fees. **Mr. Tull** said yes, because they can leave the place of employment the next day. There's some fluidity within the industry. Another issue that has come up is that currently the license itself is sent to the employee. Part of the reason they must have a careful monitoring system is that the license or correspondence about deficiencies and the license application or the wrong amount of the check goes to the licensee; it goes to employee and not to the establishment. He said they may want to suggest that a copy be sent to the employer of record so that they can make sure that their employees are moving in a timely fashion to comply with the agency requirements. **Chairman Ludwig** asked how many licensed employees Mr. Steiner had. **Mr. Tull** said there were about 175. He reminded the Commission that the establishment opened fresh in November and he was sure that a variety of factors contributed to the slippage and they recognize how seriously the Commission was responding to the notion that there was any slippage and they recognize that that has to be a matter of essentially full compliance on a daily basis.

**Senator Schow** said that someone sends in an application for a license and if they send it in by certified or registered mail and if the agency sends back a copy to the individual plus a copy or a note saying that this particular individual had applied for a license, it might eliminate some of that problem. **Mr. Tull** said it would certainly help but they recognize and fully accept the responsibility that the establishment must track these matters. **Senator Schow** said the other problem he thought of was because this is a new industry, there are people going in and thinking they would like to work there, working a short time and leaving, moving around, because there are new establishments opening up. He said it was a real transition period right now and hopefully in the near future, it would settle down and some of the problems would no longer be here. **Mr. Tull** said he thinks there's no doubt that if Mr. Steiner were to open a new facility he would do things from day one that he learned to do at day nine and he would have people in place to deal with that. The Commission has continued to evolve its focus and make sure that they place attention on the most important things and deal with the others in a lesser manner, but it is a learning process. It was once discussed just under a year ago that perhaps they should attempt to do a very detailed book of rules prior to commencing any operation. The proper judgment was reached that the appendix approach – the contract approach -- within the test context would be the most practical. It would allow adaptations that Mr. Bishop mentioned earlier. He can put out a notice this afternoon if he chooses to that internal audit functions will be verified within a reasonable period and a rule change is unnecessary.

**Senator Schow** said the labor pool will probably continue to grow and it will become easier for them to find people who know the rules. **Mr. Tull** said those at Freddie's Club recognize that they cannot rely on employee applicants to help them achieve compliance. They have to help, but they cannot solely rely on them. They have to take affirmative steps to define that person's status the day they make application and to know that person's status at the time they commence employment sometime later and to make sure that the license issues at an appropriate time later and if he doesn't, on the right dates to take the action necessary. There's no question that the Commission's rules, Commission's expression is consistent with the Legislature's previous action and requires a very high level of attention to these matters. In the realm of human resources, many changes have taken place from the old card room work place to the new, which have increased the amount of work for the establishments; for example, higher wage employees mean employees now apply for loans which need employment verifications. All of this adds to the workload of the establishment that they have never had before. As they face all sorts of new burdens, they recognize that they have to walk before they can run; they think they have demonstrated that they can do so.

**Senator Prentice** wanted to know if an employee's card room license is issued for only one institution, would it carry over to other institutions and if so, are there additional charges if they wanted to work elsewhere. **Ms. Cass-Healy** said the license itself belongs to the card room employee, but they do have to apply for and pay an additional fee to transfer to a second establishment. **Director Bishop** noted that an employee can work for more than one licensee; however, they require an additional copy of a license if they did that, but the licensee that they will be working for, their employer, must sign their application. **Senator Prentice** said Sheila Lock came from Riverside Inn so she wondered if she could work at both places. **Director Bishop** said if she wanted to she could, but as he understood it she was transferring from the Riverside to Freddie's so in that case Mr. Steiner or the president of the corporation would have also had to sign her transfer application also.

**Senator Prentice** wanted to know if it would be considered two operations if it were Diamond Lil's and Freddie's. **Mr. Tull** said those were separate establishments. He said what may have happened in that particular instance is that the transfer application may have gotten lost in the blizzard of applications at the Commission. But what happened at Freddie's -- that they have now remedied -- is that there wasn't follow-up. Now they know they have to follow up so that if there is a delay it's noticed; it's dealt with and the Commission then has a chance to search their files and see if there was a glitch or not.

**Chairman Ludwig** said the Commission could decide to take action one way or the other on this phase II right now or they could consider the relevant facts as to Silver Lanes in Spokane and do it separately or do them together. **Commissioner McLaughlin** asked that this be done separately. **Chairman Ludwig** said there was a decision before the Commission -- unless there was further discussion or comment -- as to whether they decide to approve the phase II review subject to delegation to the director to make the final approval based on his satisfaction that Freddie's of Renton is in full compliance.

**Commissioner McLaughlin** said she agreed with Commissioner Herbold that things should be done in a public method. She said she felt comfortable taking the staff's recommendation of letting the director make the decision that they're in full compliance and it looks like they're in full compliance almost at this time -- just some things were going to take a little time and could be done by May 10<sup>th</sup>. She said this is one of the reasons she was totally against going to just 10 meetings per year because she knew this kind of thing was going to come up.

**Commissioner Heavey** wanted to know when the Commission was authorized to delegate its responsibilities to the director. **Mr. McCoy** said there was a specific statute that authorizes the Commission to do that. **Chairman Ludwig** reminded him that the Commission had done it already in the case of Freddie's last fall.

**Mr. Tull** said that it was important to recognize that what was before the commissioners was, in his interpretation, a recommendation that the Commission approve phase II subject to the director's verification that the items in suspense this morning had been dealt with as they appeared to be progressing. He said he did not think it was delegation of decision making. He said words had been used like that, but he thought it was very much a Commission action and in keeping with the statute, the rules, the test contracts themselves if the Commission is comfortable in approving it so long as they have the assurance that the remaining items are completed as they appeared to be, then it's a Commission action; it's not a delegation of authority.

**Mr. McCoy** said RCW 9.46.070(2), which deals with commercial stimulant licenses specifically, says that the Commission may authorize the director to temporarily issue or suspend licenses subject to final action by the Commission. He said that has been interpreted in the past as including lesser authority – in this they're talking about the authority to amend an authorization that's already been given. On that basis, he said the Commission does have authority to delegate to the director on a case-specific basis. The authority to make that determination as long as there's specific parameters that have already been identified by the Commission as to how that authority is going to be exercised. In other words, what are the criterion by which the director is going to be making that decision and they have identified what the issues are, so in that sense the Commission has authority. Of course, it has the discretion as to whether it wants to do it or not.

**Commissioner Heavey** said he didn't know if he agreed or disagreed with Mr. McCoy, but he did agree that what they were saying was that perhaps in the future they can change the wording of the recommendation to say that the person is authorized to do the certain activity when the director certifies that they have met certain requirements. He said that was a common practice that's done on the national level dealing with foreign trade.

**Mr. McCoy** said that it was a conditional authorization. **Commissioner Heavey** said that was correct, but it did not mean he was necessarily in favor of Mr. Tull's request. He just wanted to clarify what they were doing.

**Commissioner McLaughlin** moved to authorize the director to sign the phase II for Freddie's Club on May 10<sup>th</sup> if all discrepancies have been corrected. **Ms. Winslow** clarified that there was nothing to sign. The Commission would just be granting approval subject to the correction of the violations and verification. She said there was no paperwork as far as signing on this particular aspect. **Commissioner McLaughlin** acknowledged the correction.

**Chairman Ludwig** called for a second; no one seconded the motion. He said the motion dies for lack of a second. He said that if the motion is not before the Commission, it means they probably won't take any action until June.

**Commissioner Heavey** said he had a great deal of respect for Mr. Tull; he thought he was a learned and honorable individual. Freddie's has the highest reputation that one can have in the business; and Fred Steiner has always had an outstanding reputation in the business. He said he had been aware of the card room in Renton for as long as he could remember.

**Commissioner Heavey** said he thought the Commission was involved in a precedent-setting type of activity where they are doing things for the benefit of one or two particular licensees. The fact that they could have if they had had a meeting in May acted on this is an irrelevancy because the Legislature can do a lot of things earlier if they only were in session. The committees and the Legislature could act if only they would meet or if only they had time. He said he had heard many times that a bill has died because it wasn't acted upon because of the deadline – not that it was unmeritorious or something like that – so that's just part of the process. The fact that the staff went out there yesterday to look at these things indicates to him that the staff is making a special effort for a licensee. It's a precedent that he did not believe was appropriate; things should be done in an orderly fashion, should be done within the time constraints that are required.

**Commissioner Heavey** said Mr. Tull is now and he used to be engaged in land use. He said many times they get burnt because they didn't do something because it was not within a certain timeframe. The timeframe is artificial, but it is there so you have to start over or you have to do something else. Timeframes are set there. It's unfortunate that this occurred, but it did occur and he did not want to set the precedent to where he was acting in order to benefit a particular licensee or licensees. He said that he believed that by doing that they would set a precedent that sets private interest ahead of public interest and he had said many times when on this Commission, he was there to regulate the activity not to make sure it was profitable. And that was his belief and what was appropriate.

**Senator Schow** said he could understand what Commissioner Heavey was saying. His concern was and he said it would be his statement to the Commission that they seriously consider going back to twelve meetings a year. He said he could see this happening to other establishments in the future. He said he had been involved in legislation that hadn't passed because of time constraints, but there are private businesses here; people who many times have lots of money invested in a business and 30 days can be a long, long time to a small business

that is just trying to get started. If this is going to create a problem by not having a meeting in May and making someone wait until June and if that's the decision of the Commissioners, that's fine, but he thought they ought to look at it in the future of saying, they need to meet every month so that if someone they are regulating has a problem, they have an opportunity to bring that situation before the Commission on a timely basis.

**Chairman Ludwig** said cancellation of the May meeting, for the record and for everyone's information, wasn't done with the intent of reducing the number of meetings. The May meeting just happened to conflict with another very important meeting for the staff and it was hard to get those two done on schedule.

**Commissioner Heavey** said the Commission itself decided that it should be involved to this degree. He said he would not have had a problem if they had decided on a different process where the director certified that all of the requirements had been, et cetera, and then go to level II after six months, but the fact was the Commission did decide to be involved and so that's what the process is. The Commission must be involved, the approval is required, so therefore he thinks they should wait until they do it in an orderly fashion.

**Commissioner McLaughlin** withdrew her motion.

**Chairman Ludwig** said that before he voiced his concerns, he wanted to preface it by saying to Mr. Steiner and his counsel that, aside from the deficiencies and requirements that the Commission has noted and from everything he had learned, Mr. Steiner had no major problems in Renton. He has run his business with experience, without problems, was serving his customers well; it is a profitable business, and he's doing a nice job in general.

**Chairman Ludwig's** concern was kind of in line with what Mr. Tull said – you've got to walk before you can run. He said he had read in the newspaper last month about the time of the March meeting that plans were in effect to open another casino in Auburn. Chairman Ludwig believes that a person should make sure he is in 100 percent compliance with the first operation before he moves on to add another one even though there were compelling reasons to do it. He said that if he were in Mr. Steiner's shoes he'd have those same reasons and motivations. He said his feelings about this does not mean he does not approve the phase II now or in June or that he has any feelings about subsequent licenses, but he thinks a person must walk before they run as Mr. Tull said. He thought that the first test case in the state of Washington should be an exemplary operation before plans are laid for the second one and licenses should have been applied for in the second one.

**Chairman Ludwig** asked Mr. Steiner to not take his comments personally, but rather he hoped that Mr. Steiner would appreciate that what was said was said in fairness that Mr. Steiner was entitled to hear it so they are on a fair and honest relationship. He hoped things would work out for them, that they get phase II. Unless the Legislature steps in and says one card room per individual just like the tribes have one casino per reservation, he hoped things work out for the second card room.

**Chairman Ludwig** thanked Mr. Tull. He said that if a second had been made to the motion it may or may not have passed with only four present. He said he would see them in June.

**Mr. Tull** said he appreciated Commissioner Heavey's strong remarks about the fact that he's not finding fault, but that he wants the process to work in a certain way. Mr. Tull said he wanted the Commission to go away from this evaluation knowing if they had not the tumultuous time, they would have gone through this review process learning about one tenth what they learned yesterday. He said he understood what they have said and they may or may not make application to the chairman for telephonic meeting. It is up to the chair, not up to them, but they may ask it.

**Chairman Ludwig** said in view of the fact that this took much longer than he had anticipated, he wondered if the owner of Silver Lanes were still there.

## **SILVER LANES**

**Ms. Winslow** said Silver Lanes was brought before the Commission for the phase II recommendation yesterday. They passed out follow-up information on their review of Silver Lanes. Of the items noted in that review, nine of those items have been corrected and five are in process of being corrected. Those items which are in process of being corrected are: Item # 1, where it talks about the requirement of eliminating incompatible functions; the organization has hired a new accounting manager and they will be starting in April 16 of '98. Item #2 the organization failed to complete a main cage inventory count detailing reconciliation of cash and chips on a daily basis. They worked out with one of their supervisors yesterday a method to reconcile the cash and chips and that will implemented on April 13<sup>th</sup>. Item #7 was concern about the general ledger being able to record all transactions. Final implementation of the complete GL is expected on April 15<sup>th</sup>. Item #11, the licensee failed to complete an accurate organization chart. An addendum is needed and it's to be submitted on April 13<sup>th</sup> and they had been advised by the operator that has been completed. They have not verified that at this point. The last item that was noted on page four with regard to an internal auditor which was not noted as a violation of appendix C; however, it was in the licensee's internal control. They have hired a new internal auditor that will start April 16<sup>th</sup>, the same day as the new accounting manager.

**Chairman Ludwig** asked if their recommendation was for approval of phase II subject to final verification and satisfaction by the director. **Ms. Winslow** said she would continue to make that recommendation, but she would also defer to the wishes of the Commission on that. **Chairman Ludwig** said Mr. Jones had the benefit of watching how the last matter was handled, so that may be helpful or may be discouraging.

**Mr. Jones** said this was Silver Lanes' phase II. They have completed the deficiencies. He agreed with Mr. Bishop's recommendation of having an internal auditor. If they would have had one, they would have corrected a lot of the deficiencies before they would have come to this stage. They had a phase II review that last four days and he complimented the agents because they were finding numerous areas that they can get better in their operation and if they look at that positively, then it will benefit everyone. They had also asked about the fees for key employees. He said there were two fees. One is \$209, which is a person that's lived in this state for the last 10 years. Then there's the fee of \$261, which is if you've lived out of the state for the last 10 years, and sometimes the country – he did not know what the actual transfer fee was – but sometimes that \$52 comes into play because that's the difference between the \$261 and the \$209 and they've had that happen numerous times where they find out that it was overlooked that someone actually had lived out of the state.

**Mr. Jones** said Silver Lanes would still like to see themselves approved for phase II even though it has been decided because in this case the operations do need to be looked at separately; they are in a little bit of a disadvantage because of the fact that it has already been established to hold it off until the June meeting.

**Chairman Ludwig** called for questions.

**Senator Schow** said he respects the judgment of the Commission regarding the precedent that would be set if they were to allow Freddie's or Silver Lanes to move ahead, but he said the relationship between the industry and the commissioners and the staff has been amazing to him how well they all work together to regulate the industry. He said he was concerned that this unnecessary 30-day wait was maybe the kind of thing that starts pushing those two apart. He thought everyone could be proud of how they have all worked together. He said a second precedent is being set that he hopes does not destroy this working relationship between all of them. He hopes that Freddie's and Silver Lanes will understand that this is a unique situation just because of circumstances in May and everyone will look at this as something that hopefully will not happen again. He believes that time is important to everyone and that people ought to have the opportunity to bring their matters before the Commission as quickly as possible and not have to be held up because of circumstances that are other than they want to have control of.

**Chairman Ludwig** asked if there was a desire by any of the commissioners to make a motion in reference to the phase II approval for Silver Lanes in Spokane. No motion was made.

**Chairman Ludwig** told Mr. Jones that the situation facing the Commission today is a lot different than it was last fall when he was approved to commence operations on November 14<sup>th</sup>. He said he has not lost sight of the fact that they are in business and he assumed quite successfully if he were willing to go to the next level. He said the good side of this was that they weren't just starting up. He added that Mr. Tull, on behalf of Mr. Steiner, is

successfully getting them to consider this approval at some earlier date by a telephone conference call if that's permissible and recommended. He said that if that were done for one, it would be done for him as well. The Commission will not be in Spokane until July so he hoped to see him over there.

**Senator Prentice** said she is sensitive to this because Skyway Bowling Lanes is in her district, but she saw that they had them listed as a commercial bowling alley. **Mr. Jones** said it is a bowling center. **Chairman Ludwig** thanked him for waiting over and they would consider the next step in June if not in some fashion sooner.

**Chairman Ludwig** said that concluded the agenda other than a short executive session. He called for further comments or business item under general business, new business.

### **COMMENTS FROM THE PUBLIC OR PUBLIC OFFICIALS**

**Eric Durban** said he was the chief financial officer of the Muckleshoot Casino. He said he didn't want to comment during the recent phase II licensing realizing that they were a competitor and he didn't want to influence it one way or another; however, he said he wanted to issue a concern if his understanding was correct that internal audit functions are not now required. He said he understood that was going to be considered and he would encourage that to happen immediately. He said they have four staff involved seven days a week in the internal audit function. It is a critical aspect of making sure the integrity of the facility is in place. Secondly, based on the concerns that were found on Title 31 compliance that is another issue that at least from facility to facility they compete for large players and if anybody is violating Title 31 it is to the establishment's advantage to violate Title 31 and that will not bode well for the integrity of the industry when somebody is caught and prosecuted for violations of that. He encouraged strong enforcement of Title 31 as well as immediate implementation of some requirements in regard to internal audit functions.

**Director Bishop** said that, as he indicated earlier, his recommendation would be to immediately change appendix C to require that function as soon as operations begin. The staff was a little reluctant to do it before because they were going to be involved very heavily during this start-up phase and felt an internal auditor would not be required. He said they learned from these reviews and currently feel that having an internal auditor is an important function. He said he would like to state that the staff thinks that the Title 31 compliance is important and, in fact, the Title 31 filings were made. Maybe Mr. Durban missed it. The supplement that summarizes them was the one that wasn't made. The licensee is well aware of that and it will not occur in the future.

**Mr. Durban** said he sympathizes with those who have gone through start-up because he has gone through many of those processes himself.

**Mr. Saucier** said he wanted to address Title 31 and other forms that were required by federal law. It appeared that when he was debating with the staff yesterday as to when a report must be made and when it does not have to be made. Those two items are very confusing. The state of Nevada negotiated with the IRS and they have what they call Regulation 6A, which essentially replaces the Title 31 requirement. He said it would be very helpful for the commissioners, staff and the licensee community if they could invite someone from the internal revenue service to come to one of the Commission meetings and stress clarification of Title 31 requirements, perhaps in a workshop session and other requirements.

**Ms. Tellefson** said the Commission does have contacts in the IRS who conduct training sessions. They have done it in the tribal gaming arena also on this issue and they have also attended the North American Gaming Regulator's Association Conference and done training session there to state and provincial regulators. If he would like them to pursue this, they can do so.

**Chairman Ludwig** said that this was a good suggestion and they could discuss it later.

**Ms. Tellefson** said that the Governor vetoed House Bill 2724 which was passed by the Legislature and which would have required the Gambling Commission to receive an appropriation before using some of the fine money. This was a good decision for the agency.

## **EXECUTIVE SESSION**

**Chairman Ludwig** adjourned the meeting at 12:24 p.m. He said there would be a brief executive session followed by formal adjournment.

## **ADJOURNMENT**

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green  
Executive Assistant